



# FEDERAL REGISTER

---

Vol. 76

Friday,

No. 171

September 2, 2011

---

## Part III

### Department of Commerce

---

National Oceanic and Atmospheric Administration

50 CFR Part 660

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Program Improvement and Enhancement; Amendment 21-1; Proposed Rule

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660****[Docket No. 110616336–1501–01]****RIN 0648–BB13****Fisheries Off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Program Improvement and Enhancement; Amendment 21–1**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed action would implement revisions to the Pacific coast groundfish trawl rationalization program (program), a catch share program, and includes regulations that affect all commercial sectors (limited entry trawl, limited entry fixed gear, and open access) managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). This action includes regulatory amendments to further implement Amendments 20 and 21 to the FMP and an FMP amendment to further revise Amendment 21 (called Amendment 21–1). This action includes, but is not limited to: revisions to the Pacific halibut trawl bycatch mortality limit, clarification that Amendment 21 supersedes limited entry/open access allocations for certain groundfish species, revisions to the observer coverage requirement while a vessel is in port and before the offload is complete, revisions to the electronic fish ticket reporting requirements, revisions to the first receiver site license requirement, further clarification on moving between limited entry and open access fisheries, a process for end-of-the-year vessel account reconciliation, and an exemption from processing at sea for qualified participants in the Shorebased Individual Fishing Quota (IFQ) Program.

**DATES:** Comments on this proposed rule must be received no later than October 14, 2011.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2011–0201, by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal, at <http://www.regulations.gov>. To submit

comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA–NMFS–2011–0201 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- **Fax:** 206–526–6736; Attn: Jamie Goen.

- **Mail:** William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Jamie Goen.

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter “N/A” in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted to William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, and to OMB by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Jamie Goen, 206–526–4656; (fax) 206–526–6736; [Jamie.Goen@noaa.gov](mailto:Jamie.Goen@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

In January 2011, NMFS implemented a trawl rationalization program, a catch share program, for the Pacific coast groundfish fishery’s trawl fleet. The program was adopted through Amendment 20 to the FMP and consists of an IFQ program for the shorebased trawl fleet (including whiting and non-whiting fisheries); and cooperative (coop) programs for the at-sea mothership (MS) and catcher/processor (C/P) trawl fleets (whiting only). Allocations to the limited entry trawl fleet for certain species were developed through a parallel process with Amendment 21 to the FMP.

On May 12, 2010 (75 FR 26702), NMFS published a notice of availability

of Amendments 20 and 21, and—consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA)—made its decision to partially approve the amendments on August 9, 2010. Because of the complexity of Amendments 20 and 21, NMFS implemented them through multiple rulemakings. Over 2010, NMFS published three rulemakings related to the trawl rationalization program. The first was a final rule to collect ownership information from all potential participants in the program and to notify them of the databases that would be used for initial issuance and the date by which to make any changes to those databases (75 FR 4684, January 29, 2010). The second was a final rule to restructure the Pacific coast groundfish regulations, establish the allocations set forth under Amendment 21, and establish procedures for the initial issuance of permits, endorsements, quota share, and catch history assignments under the IFQ and coop programs (75 FR 60868, October 1, 2010; correction published 75 FR 67032, November 1, 2010). The third was a final rule to establish several of the program components required for implementation of the rationalized trawl fishery in January 2011, including IFQ gear switching provisions, details of observer requirements and first receiver catch monitor programs, first receiver site licenses, equipment requirements, catch weighing requirements, retention requirements in the Shorebased IFQ Program, quota share (QS) accounts, vessel accounts for use of quota pounds, requirements for coop permits and coop agreements, further tracking and monitoring components, and economic data collection requirements (75 FR 78344, December 15, 2010).

The regulations implementing the program became effective January 1, 2011; however, necessary tracking systems to make the program operational did not become active until January 11, 2011, the date fishing began under the new program. Since that time, the Pacific Fishery Management Council (Council) and NMFS have been addressing implementation issues as they arise, some of which are the subject of this proposed rule. This proposed rule also includes items that are further revisions and refinements to the program to further implement Amendments 20 and 21, and corrects errors or old regulatory language that need to be corrected, revised, or made consistent with other sections of the regulations. Additionally, the Council took final action at its June 2011

meeting on some trailing actions for the program that are also included in this proposed rule. The trailing actions include an FMP amendment stating that Amendment 21 trawl/non-trawl allocations supersede the limited entry and open access allocations originally established in Amendment 6 for species listed in Amendment 21; an FMP amendment to revise the calculation of the Pacific halibut trawl bycatch mortality limit; a regulatory amendment to provide an exemption from the prohibition on processing groundfish at-sea for qualified participants in the Shorebased IFQ Program; a regulatory amendment for the adaptive management program (AMP) to extend the “pass-through” of non-whiting quota pounds through 2014 or until an AMP quota pound allocation process is established, whichever is earlier; and a regulatory amendment to allow a change in registration of a mothership catcher vessel (MS/CV) endorsement and its associated catch history assignment from one limited entry trawl endorsed permit to another. These trailing actions are discussed in more detail later in the preamble. Additional rulemakings would follow in the future and include other operational components of the catch share program, such as the requirements for new observer provider certification and an adaptive management program. NMFS is also planning a future “cost recovery” rule based on a recommended methodology currently under development by the Council.

The Council discussed the items included in this proposed rule over its March, April and June 2011 meetings, with some preliminary discussions occurring at the September and November 2010 Council meetings.

In addition to this proposed rule, NMFS is in the process of publishing a correction to regulations for the trawl program to update erroneous cross references, outdated terms, and duplicate regulatory entries. The correction is expected to publish in August or September 2011.

Some of the provisions in this proposed rule may affect all sectors of the commercial groundfish fishery (limited entry trawl, limited entry fixed gear, and open access), some provisions apply to several or all of the trawl programs (*i.e.*, Shorebased IFQ Program, MS Coop Program, C/P Coop Program), while other details only affect one program, as discussed below.

#### Changes Applicable to All Commercial Groundfish Sectors

##### *Moving Between Limited Entry and Open Access Fisheries*

Since implementation of the trawl catch share program, there has been interest in the rules and restrictions concerning movement between limited entry and open access fisheries or even between sectors within the limited entry trawl fishery. NMFS developed a matrix, or table, to guide participants on the requirements (see NMFS’ public notice dated January 19, 2011, and the small entity compliance guide revised February 25, 2011). In general, current groundfish regulations had been interpreted to allow all limited entry fishermen (trawl and fixed gear) to move between limited entry and open access fisheries with no permit action by simply changing their fishery declaration between fishing trips, with 3 exceptions (non-groundfish trawl gear for California halibut, ridgeback prawn, and sea cucumber). Under this interpretation moving between the IFQ fishery and open access fishery is distinct from “gear switching” under the Shorebased IFQ Program. Under gear switching, all catch is covered by quota pounds regardless of gear used. However, while quota pounds cover catch in the IFQ fishery, trip limits cover catch in the open access fishery.

In discussing this issue with Council staff, NMFS realized that the current groundfish regulations only partially match the Council’s action from Amendment 20. Amendment 20 requires quota pounds for catch of IFQ species by vessels registered to a limited entry trawl permit, regardless of gear used unless that gear is exempted. Thus, in order for a vessel registered to a limited entry trawl permit to participate in another fishery without being required to cover catch of IFQ species with quota pounds, the vessel would need to remove the limited entry trawl permit, unless it were using one of the exempted gears. In other words, only vessels using certain gears would be able to move between the limited entry trawl and open access fisheries by changing their declaration without requiring a corresponding change to remove their limited entry trawl permit so that it is no longer registered to the vessel. As specified in current regulations at § 660.140(e)(1)(i), these exempted gears are: Non-groundfish trawl; gear types defined in the coastal pelagic species FMP; gear types defined in the highly migratory species FMP; salmon troll; crab pot; and limited entry fixed gear when the vessel also has a limited entry permit endorsed for fixed

gear and has declared that they are fishing in the limited entry fixed gear fishery (*i.e.*, a dual-endorsed permit). This rule proposes language that makes explicit the requirement to remove the limited entry trawl permit, unless using exempt gear. New regulatory language is proposed at § 660.60(h)(7)(ii)(B).

This rule also proposes further revisions to § 660.140(e)(1)(i) to clarify that limited entry permitted vessels are subject to the open access fishery regulations when declared in to an open access fishery. This rule also proposes changes to § 660.333(b), (c), and (d) in the open access fishery regulations to reflect changes from Amendment 20 which no longer require the limited entry permit to be removed from vessels participating in the non-groundfish trawl fisheries for ridgeback prawn, California halibut, and sea cucumber fisheries. No changes are needed for the non-groundfish trawl fishery for pink shrimp because regulations do not specify a requirement to remove the limited entry permit from the vessel to participate.

Since 2004, regulations have stated that a vessel participating in the ridgeback prawn, sea cucumber, or California halibut trawl fishery must not have a Federal limited entry groundfish permit registered to the vessel. Amendment 20 added a gear exception that included the non-groundfish trawl fleet and provided them more flexibility. The result is that a vessel registered to a limited entry trawl permit may participate in the IFQ fishery or the non-groundfish trawl fishery by simply changing their vessel declaration.

In addition, to clarify that ridgeback prawn, California halibut, and sea cucumber are open access fisheries, NMFS intends to add the words “open access, non-groundfish trawl” to those regulations. This would distinguish the open access, non-groundfish trawl gear used for those fisheries from other gear that may be used for those fisheries.

These proposed regulations would be more narrow than the January 19th public notice and would only allow a subset of vessels to do so (*i.e.*, those subject to the gear exception listed above and at § 660.140(e)(1)(i) and those in the limited entry fixed gear fishery). These proposed changes do not affect the limited entry fixed gear fisheries. Any limited entry vessel could also move to the open access fishery by removing the limited entry permit from the vessel and then declaring in to the open access fishery.

NMFS and the Council will continue to review the regulations on this issue for future refinements. NMFS solicits

public comment on these proposed changes and other sections of the regulations which may need further revisions to provisions regarding vessels moving between limited entry and open access fisheries.

#### *Crossover Provisions*

Crossover provisions apply to two activities: (1) Fishing on different sides of a management line, or (2) fishing in both the limited entry and open access fisheries during a two-month cumulative limit period. The crossover provisions were structured for trip limit fisheries. In some places, the current regulations do not fully implement the trawl rationalization program adopted under Amendment 20.

NMFS proposes some revisions to the language in the crossover provisions to more accurately reflect the changes in the groundfish fishery since implementation of the trawl rationalization program. NMFS is revising regulations on crossover provisions for the groundfish fishery overall in subpart C, and is removing duplicate regulatory text in the sector regulations for the limited entry trawl fishery, limited entry fixed gear, and open access fisheries (subparts D through F, respectively). These sector regulations will reference the overall groundfish fishery crossover provisions and any sector specific crossover provisions. NMFS is also proposing to change the term “operate” in the crossover provisions to “fishing” to more accurately reflect the applicable regulated activity. NMFS is proposing revisions to the crossover provisions in the following regulations: § 660.60(h)(7) for the general groundfish fishery, §§ 660.120 and 660.130(c) for the limited entry trawl fishery, § 660.220 for the limited entry fixed gear fishery, and § 660.320 for the open access fishery. Regulations at §§ 660.120, 660.220, and 660.320 would be revised to remove duplicative language that is covered in § 660.60(h)(7) for the general groundfish fishery. Regulations at 660.130(c) would be revised to update limited entry trawl fishery management measures under the trawl rationalization program. NMFS is soliciting public comment on these proposed revisions and any implications they may have, especially for dual-endorsed limited entry permits.

#### *Corrections/Consistency*

NMFS proposes to clarify the regulations to be more specific regarding permit actions for changes in permit ownership and vessel registrations. NMFS would replace the word “transfer,” where appropriate, and use terms such as “change in permit

ownership” or “change in vessel registration.” NMFS is making this change to avoid confusion because the term “transfer” is susceptible to more than one meaning. The following regulations would be revised: § 660.12(d)(2); § 660.14(d)(4)(iii) and (vii); § 660.25(b)(1)(iii) and (v), (b)(3)(i), (b)(3)(iv)(A)(1) and (2), (b)(3)(iv)(C)(4) and (5), (b)(3)(vii), (b)(4)(iv)(C), (b)(4)(v)(C) and (D), (b)(4)(vi)(B), (b)(4)(vii) introductory text, (b)(4)(vii)(F), (b)(4)(viii), (b)(4)(ix), and (f); § 660.112(b)(1)(iv); § 660.140(d)(3)(ii)(A), (d)(4)(v), and (f)(7); § 660.150(d)(1)(iii)(A)(1)(vi), (f)(2)(i), (f)(3)(i), (g)(1)(iii), and (g)(3)(i); § 660.160(d)(1)(iii)(A)(1)(iv), (e)(1)(i), (e)(2)(i); and § 660.231(b)(4)(i) and (b)(4)(ii)(A).

NMFS proposes to clarify regulations regarding what constitutes a change in ownership for all limited entry permits (limited entry trawl, limited entry fixed gear and MS permits), for QS permits, and for vessel accounts. Changing the legal, registered name of the limited entry permit owner, the QS permit owner, or the vessel account owner is considered a change in ownership and must be reported to NMFS to ensure the agency has accurate records. In other words, adding or removing an individual or entity from the legal, registered name on the permit or vessel account is a change in ownership and would require a change in permit ownership form and any other required forms (*i.e.*, ownership interest form) or documentation. NMFS must have accurate records to track any required ownership or accumulation limits. The following regulations would be revised: § 660.25(b)(4)(iv)(A) for limited entry permits, § 660.140(d)(3)(ii)(A) for QS permits and accounts and § 660.140(e)(3)(ii) for vessel accounts.

NMFS proposes to clarify regulatory titles on size limits and weight conversions to more accurately reflect the regulatory language within those sections. The title to paragraph § 660.60(h)(5)(i) should be specific to length measurements, while (h)(5)(ii) should be specific to weight conversions and size limits.

#### **Changes Applicable to All Trawl Programs**

##### *Amendment 21 Supersedes Limited Entry/Open Access Allocations for Amendment 21 Species*

Amendment 21 to the FMP established allocations to the limited entry trawl fishery participants. As part of Amendment 21, allocations were established between the trawl and non-trawl sectors for certain groundfish

species (called Amendment 21 species). In a letter to the Council dated August 9, 2010, NMFS disapproved part of Amendment 21 because the FMP language available to the public and to the Council during the Council’s decision making did not clearly state that the Amendment 21 allocations for certain species supersede the previous limited entry/open access allocations originally established under Amendment 6 to the FMP, which established the limited entry fishery. In other words, the partial disapproval of Amendment 21 was because of a concern over the public record and procedural issues regarding the record. This issue has since been addressed through the Council process by providing FMP and regulatory language at the Council’s March, April, and June 2011 meetings.

This action includes an FMP amendment (called Amendment 21–1) and proposed revisions to regulatory language at § 660.55(a) and (e)(2) implementing Amendment 21 explicitly stating that, for Amendment 21 species, allocations decided under Amendment 21 supersede allocations previously decided between limited entry and open access fisheries.

NMFS published a notice of availability for this FMP amendment, Amendment 21–1, on August 15, 2011 (76 FR 50449). Consistent with requirements of the MSA, NMFS must make a decision to approve, disapprove, or partially approve the amendment by November 13, 2011. Comments on whether the amendment should be approved must be submitted to NMFS by October 14, 2011.

##### *Halibut Trawl Bycatch Mortality Limit*

Amendment 21 to the FMP established a trawl bycatch mortality limit for Pacific halibut. The trawl bycatch mortality limit for halibut under Amendment 21 set a total catch limit of Pacific halibut in the limited entry trawl fishery for the trawl rationalization program to reduce trawl bycatch of halibut in future fisheries in order to provide more yield to directed Area 2A (Washington, Oregon, and California) halibut fisheries (*i.e.*, primary use of halibut is to provide fish for the directed Tribal, commercial, and recreational fisheries). However, before the start date of the trawl rationalization program, new scientific information was released indicating that the total catch of halibut (legal+sublegal) was higher than previously considered by the Council and that the formula previously adopted under Amendment 21 did not fit the intended reduction. The Council had intended a 50 percent reduction in trawl

bycatch mortality from historical levels, but the formula applied to the new information result in approximately a 66 percent reduction. In response, NMFS implemented interim measures for the 2011 groundfish fishery which interpreted the trawl bycatch mortality limit described in Amendment 21 to be legal halibut totaling no more than 130,000 lb net weight. "Legal" refers to halibut over 32 inches in length, as opposed to sublegal; "net weight" refers to the weight of a halibut with its head attached but entrails removed, as opposed to round weight. In contrast, Amendment 21 stated that the trawl bycatch mortality limit legal and sublegal halibut set at 15 percent of the International Pacific Halibut Commission's (IPHC's) constant exploitation yield (CEY, composed of legal halibut only) not to exceed 130,000 lbs annually for the first four years and not to exceed 100,000 lbs annually beginning in the fifth year. For NMFS management purposes, the interim measure resulted in calculation of the trawl bycatch mortality limit by converting from net weight to round weight and by converting legal sized halibut to legal and sublegal sized halibut. This calculation reflects the difference between the total constant exploitation yield (TCEY) established by the IPHC (net weight, legal-sized fish) and NMFS management of groundfish and halibut (round weight, legal and sublegal-sized fish). The interim measure also removed the 15 percent cap and established the 2011 trawl bycatch mortality limit at 130,000 lbs. It also noted that the 10 mt set-aside for the at-sea trawl sectors and the shorebased sector south of 40°10' N. lat was for legal and sublegal sized halibut, round weight.

Because the interim measures expire at the end of 2011, the Council has recommended a long term solution by making further revisions to Amendment 21 for calculation of the halibut trawl bycatch mortality limit. For 2012 and beyond, the Council recommended amending the FMP to (1) Specify that the trawl bycatch mortality limit would be calculated by converting to total round weight of legal and sublegal sized halibut, (2) base the trawl bycatch mortality limit on the best estimate of TCEY from the IPHC (*i.e.*, preliminary IPHC estimate from their interim meeting of TCEY), and (3) clarify that the 10 mt set aside is for legal and sublegal, round weight. These revisions require an amendment to the FMP and the implementing regulations to change provisions related to the amount of Pacific halibut bycatch mortality for

which the limited entry trawl fishery will be managed.

NMFS published a notice of availability for this FMP amendment, Amendment 21–1, on August 15, 2011 (76 FR 50449). Consistent with requirements of the MSA, NMFS must make a decision to approve, disapprove, or partially approve the amendment by November 13, 2011. Comments on whether the amendment should be approved must be submitted to NMFS by October 14, 2011.

This preamble provides information about the implementing regulations that would result from this FMP amendment. Regulations at §§ 660.55(m) and 660.140(d)(1)(ii)(C) regarding the Pacific halibut trawl bycatch mortality limit would be revised to reflect these changes. NMFS also recognizes that if Pacific halibut IBQ pounds are subject to the carryover provisions in the Shorebased IFQ Program, it is not clear what effect it would have on the calculation of the trawl bycatch mortality limit in a subsequent year, and NMFS specifically requests public comment to address this issue.

#### *Process To Issue Interim Allocations*

NMFS is aware of the management possibility of having to provide allocations before harvest specifications and management measures are final, as was the case in 2011 for the Shorebased IFQ Program. Should this event occur in the future, NMFS is proposing a framework approach to provide NMFS the implementation authority to issue interim allocations for any of the trawl rationalization program sectors (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). This approach is consistent with existing regulations for the Pacific whiting allocation in the Shorebased IFQ Program where the final whiting harvest specifications are not effective until spring each year. It provides a parallel process should the situation occur for non-whiting groundfish or Pacific halibut in the Shorebased IFQ Program and for any allocated species in the MS or C/P Coop Programs. NMFS proposes changes to the regulations at § 660.140(d)(1)(ii)(A) and (C) for the Shorebased IFQ Program, at § 660.150(c)(2)(i)(A) and (B) for the MS Coop Program, and at § 660.160(c)(2) and (3) for the C/P Coop Program to establish a process to issue interim allocations.

#### *Threshold Rules for Annual Issuance of Allocation*

During the annual issuance of individual allocations of quota pounds (QP) to QS permits in the Shorebased

IFQ Program or to MS coops or the non-coop fishery in the MS Coop Program, NMFS endeavors to ensure that the individual allocations total 100 percent of the sector allocation. However, because of rounding rules, calculations may not add up to 100 percent. For example, if several QS permits have similar percentages, the rounding rules may cause the calculation to never quite reach 100 percent.

Accordingly, NMFS proposes to set a threshold above which it would not need to continue to run iterations redistributing the allocation. Regulations at § 660.140(d)(1)(ii) for the Shorebased IFQ Program and at § 660.150(c)(2) for the MS Coop Program would state that NMFS' annual allocations must be equal to or greater than 99.99 percent, but not to exceed 100 percent.

While the language in this proposed regulation follows the Council motion on this issue, NMFS solicits public comment on an alternate approach that would state, "Rounding rules may affect distribution of the entire shorebased trawl allocation [or allocations to the mothership coop or non-coop fisheries]; NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation." NMFS suggests this alternative language to account for circumstances where despite NMFS' best efforts, it is unable to distribute allocations equal to or greater than 99.99 percent but no more than 100 percent. Such a circumstance may occur, for instance, for quota pound distributions of IFQ species that have a very small shorebased trawl allocation, especially since quota pound distributions must be made in one pound increments. In any event, under the alternate language suggested here, NMFS would still endeavor to distribute as much of the allocation as possible.

#### *Fishery Declarations*

NMFS proposes to change some open access fishery declarations in regulations to be more specific to the types of open access net gears available to target different species. At § 660.13(d)(5)(iv)(A), NMFS would replace "open access net gear" with the following two declarations: (1) Open access CPS net gear; (2) open access CA gillnet complex gear. This change is consistent with the reporting categories available on the declaration worksheet.

#### *Corrections/Consistency*

NMFS proposes to delete regulatory language referring to the effective date of the trawl rationalization program because it is no longer needed. The sentence was included with the October

1, 2010, final rule (75 FR 60868) to make it clear that while these paragraphs were effective for initial issuance of new permits and endorsements, the overall program did not begin until January 1, 2011. Because the program is already implemented, these sentences would be removed from §§ 660.140(a), 660.150(a), and 660.160(a).

### Changes Applicable to the Shorebased IFQ Program

#### *Observer and Catch Monitor Coverage at Offload*

Because Amendment 20 to the FMP required 100 percent observer coverage, NMFS implemented a requirement for the observer to remain onboard the vessel until all IFQ species are offloaded, as specified at § 660.112(b)(1)(xiii) and 660.140(h)(1)(i). NMFS and the Council have received feedback from the industry that this requirement is overly restrictive, a burden on the industry, and a concern for the observer providers. In response to the Council's discussion on allowing the observer to depart the vessel upon return to port and for the catch monitor to conduct the hold inspection at the end of the offload, the following changes are being proposed to allow this action while ensuring catch accountability (especially for overfished species).

For bocaccio, yelloweye rockfish, canary rockfish, cowcod, and other species, as deemed necessary by the Council or NMFS, if an observer is to leave the vessel after arriving in port and prior to the offloading, the observer will document the weight and number of these retained species on a form. A copy of the form will be retained by the observer and the vessel operator, and would be made available to the catch monitor. The West Coast Groundfish Observer Program (WCGOP) will develop protocols for dealing with any discrepancies. For example, if the discrepancy is due to a disagreement on the species identification, the observer would take a picture. If the vessel operator does not agree with the documentation on the observer program form, the vessel operator could have the discrepancy noted on the observer program form and the observer could leave the vessel once in port or the vessel operator could request that the observer not submit the form and the vessel operator would be required to maintain observer (or catch monitor) coverage while in port and until all IFQ species have been offloaded.

If upon offload the number of species recorded on the catch monitor's form and observed by the catch monitor is

less than that recorded by the observer on the observer form, the catch monitor will use the number and weight of the species recorded by the observer in the catch monitor's offload report submitted for catch accounting. This would be the only time that the information from this observer form documenting the weight and number of these retained species is used in catch accounting.

NMFS proposes to revise regulations at § 660.112(b)(1)(xiii) and § 660.140(h)(1)(i) to allow an exemption from the requirement to maintain observer coverage until final offload of the catch as long as the observer has documented specified IFQ species on the observer program form and has submitted that form to the catch monitor.

NMFS also proposes to designate any changes to the list of IFQ species reported on the observer form as a "routine management measure." Under the PCGFMP and implementing regulations at § 660.60(c)(1), NMFS can designate management measures as "routine," meaning that they can be adjusted on a biennial or more frequent basis, addressed at a single Council meeting, and announced through a single notification in the **Federal Register**. To initially designate a management measure as routine, it must first be addressed during at least two Council meetings. Flexibility for the Council or NMFS to modify the list of IFQ species reported on the observer form was addressed at both the April and June 2011 Council meetings. Since it has been addressed at two Council meetings, this rule proposes to designate modification of the list of IFQ species as a routine management measure. New regulations are being proposed to be added at § 660.60(c)(1)(iv), in addition to revising regulations at § 660.112(b)(1)(xiii) and § 660.140(h)(1)(i) to address this issue.

Additionally, the term "catch monitor" would be included in regulations at § 660.112(b)(1)(xiii) and § 660.140(h)(1)(i). Adding the term "catch monitor" to these regulations allows the catch monitor to maintain coverage of the vessel in lieu of the observer while the vessel is in port. It would also allow catch monitors to complete functions such as hold inspections in lieu of the observer to ensure that all IFQ species have been offloaded.

This change may also require a change in the insurance coverage provided by catch monitor providers for the catch monitors as specified at § 660.17(e)(1)(vii)(C) to provide adequate coverage while the catch monitors are on the vessel. Because

NMFS is uncertain whether such insurance is available or necessary, NMFS solicits public comment on whether this change would require catch monitor providers to have the increased insurance coverage provided by Maritime Liability insurance to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law (\$1 million minimum) or whether current coverage required by regulation is sufficient. The regulations at § 660.17(e)(1)(vii)(C) currently require the following certificates of insurance: (1) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act (\$1 million minimum); (2) States Worker's Compensation as required; and (3) Commercial General Liability.

#### *New Process for IFQ First Receivers and Catch Monitors To Address Trucking/Transport*

Since implementation of the program in January 2011, there have been some procedural issues with the prohibition upon IFQ first receivers transporting, or trucking, catch away from the point of landing until the catch has been sorted, weighed, and recorded for submittal on the electronic fish ticket (e-ticket). Current regulations at § 660.112(b)(2)(iv) state that it is prohibited to: "Transport catch away from the point of landing before that catch has been sorted and weighed by Federal groundfish species or species group, and recorded for submission on an electronic fish ticket. (If fish will be transported to a different location for processing, all sorting and weighing to Federal groundfish species groups must occur before transporting the catch away from the point of landing)." In addition, e-tickets must be submitted within 24 hours of the date of receipt of the fish as specified at § 660.113(b)(4)(ii)(D). These regulations do not specify that the e-ticket must be filled out at the offload site nor do they specify that the e-ticket must be submitted before the catch is transported or trucked away from the offload site. They do state that the information that will be used to fill out the e-ticket must be recorded before the catch is transported away from the offload site. No changes are being proposed to these regulations with this rulemaking.

NMFS interprets these regulations to mean that the e-ticket can be filled out and submitted at a different location, but the recording of information that will be used for the e-ticket must be done prior to transport. For example, the e-ticket could be filled out and submitted 20 hours or more after the vessel offload at another facility in the port, but the fish must not be trucked

away from the point of landing until the information that will be used to fill out the e-ticket has been recorded.

NMFS proposes to add some additional regulations outlining the reporting requirements for IFQ first receivers and catch monitors whether transporting fish away from the offload site or not, to add additional required fields for e-tickets (explained below in the preamble under "additional e-ticket fields"), and to add additional requirements for catch monitoring plans. These changes were developed in close consultation with the Council and its constituents and were recommended by the Council at its June 2011 meeting. These changes should better align the regulations with industry business practices while at the same time maintaining accurate catch accounting and supporting implementation of the trawl rationalization program. In addition, these changes should further facilitate state adoption of the Pacific States Marine Fisheries Commission's (PSMFC) e-ticket format.

The additional reporting requirements for IFQ first receivers and catch monitors are outlined below and differ depending on whether the catch is being processed at the offload site or whether it is being trucked or transported away for processing at a different location. In addition, NMFS is proposing language in addition to the Council recommendation, and included in the process described below in this preamble, to specify which process must be followed in cases where fish will be transported away for processing at a different location, but for which an electronic fish ticket must be recorded prior to transport. NMFS is proposing this addition to accommodate any more restrictive state reporting requirements. All existing e-ticket recording and submittal regulations would remain in place with the modifications outlined below.

The following process is proposed for offloading at an IFQ first receiver where the fish will be processed at the offload site or if an electronic fish ticket is recorded prior to transport:

1. The first receiver will communicate the e-ticket number to the catch monitor.

2. After completing the offload, the e-ticket information will be recorded immediately.

3. Prior to submittal of the e-ticket, the information recorded for the e-ticket will be reviewed by the catch monitor and the vessel operator who delivered the fish.

4. After review, the first receiver and the vessel operator will sign a printed hard copy of the e-ticket or the original

dock ticket if the delivery occurs outside of business hours.

5. Three copies of the signed e-ticket will then be produced by the first receiver with the following distribution: One copy retained by the vessel operator, one copy retained by the first receiver, and one copy sent to the state of origin if required by state regulations.

6. After review and signature, the e-ticket will be submitted within 24 hours of the completion of the offload.

For offloading at a first receiver where the fish will be transported or trucked for processing at a different location if an electronic fish ticket is not recorded prior to transport, the following process is being proposed:

1. The first receiver will communicate the e-ticket number to the catch monitor at the beginning of the offload.

2. The vessel name and the e-ticket number will be recorded on each dock ticket related to that delivery. The term "dock ticket," as used here, means a form generally accepted by the state to record the landing, receipt, purchase, or transfer of fish.

3. Upon completion of the dock ticket, but prior to transfer of the offload to another location, the dock ticket information that will be used to complete the e-ticket will be reviewed by the catch monitor and the vessel operator who delivered the fish.

4. After review, the first receiver and the vessel operator will sign the original copy of each dock ticket related to that delivery.

5. Three copies of the signed dock ticket will then be produced by the first receiver with the following distribution: One copy retained by the vessel operator, one copy retained by the first receiver, and one copy sent to the state of origin if required by state regulations.

6. Based on the information contained in the signed dock ticket, the e-ticket will be completed and submitted within 24 hours of the completion of the offload.

7. To facilitate monitoring and catch tracking, original dock tickets must be retained by the first receiver submitting the e-ticket as required by state and Federal regulations.

8. Upon submittal of the e-ticket, three copies of the e-ticket will be produced by the first receiver with the following distribution: One copy retained by the vessel operator, one copy retained by the first receiver, and one copy sent to the state of origin if required by state regulations.

It is NMFS' understanding that transport requires supporting documentation per state regulations and that this process would support the state regulation by allowing dock tickets with

e-ticket numbers or printed e-tickets to accompany the transported catch. The term "dock ticket" means a form accepted by the state to record the landing, receipt, purchase, or transfer of fish. The states may use different terms for this document.

The States of Washington, Oregon, and California retain the option to address areas of Federal regulations with more specific and restrictive state regulations. For example, it is NMFS' understanding that the state of Washington may require the e-ticket or state fish receiving ticket to be submitted before the catch is transported out of the state of Washington.

In addition to the reporting and process changes outlined above, the catch monitoring plan requirements as part of the first receiver site license application will be revised to add an additional requirement detailing how the e-ticket submittal requirements will be met. As with other aspects of the catch monitoring plans, e-ticket submittal proposals will be evaluated and accepted or rejected by NMFS.

These changes are being proposed by revisions and additions to the following regulations: §§ 660.11 for definitions; 660.113(a)(2) and (b)(4)(i) and (ii) for recordkeeping and reporting of e-tickets; and 660.140(f)(3)(iii)(C) for the catch monitoring plan requirements. NMFS is not proposing changes to the regulations at § 660.112(b)(2)(iv) on prohibitions, described above in the preamble, because those regulations do not restrict the process and changes outlined here. NMFS solicits public comment on these proposed changes, especially on the proposed changes at § 660.113(b)(4)(ii)(E) and (F) regarding the process and submittal requirements for dock tickets and e-tickets.

#### *Additional e-Ticket Fields*

NMFS proposes several new fields to be added to electronic fish tickets and is making it mandatory to complete the existing ex-vessel value field on e-tickets. Many of these new fields are being added to further facilitate state adoption of the PSMFC's e-ticket format. These new fields include: (1) A field to type the name of the vessel operator; (2) a signature block for the vessel operator's written signature for printed documents; (3) a signature block for first receiver's written signature for printed documents; and (4) a drop down box titled "Inside/Outside State Waters," containing the following: Caught outside 3 miles, caught inside 3 miles, or both.

The additional e-ticket field to document whether the fish were caught

in state waters, Federal waters, or both will aid enforcement. Federal jurisdiction over the Pacific coast groundfish fishery under the MSA applies only to fishing in the exclusive economic zone, beyond three miles from shore, and to some extent also on the high seas beyond the exclusive economic zone. In a MSA groundfish enforcement case, part of the burden is to prove the illegal fish were caught in Federal waters, *i.e.*, beyond three miles. It is NMFS' understanding that the Washington state fish ticket form includes three boxes to check, including "fish caught outside 3 miles." The burden of proof for enforcement cases can also be met in other ways, such as logbook entries or statements by the skipper, but a check box would make the burden of proof clearer for both state and Federal enforcement cases.

While a field for ex-vessel value already exists on the e-ticket, NMFS has had mixed reporting of the ex-vessel value on the e-ticket because it is not currently listed in the "required information" section of the regulations. Regulations at § 660.113(b)(4)(i) require first receivers to complete certain fields on an e-ticket. These regulations also have a clause that the Regional Administrator may deem other information as required to be completed by the IFQ first receiver on the e-ticket. In a memo dated April 4, 2011, NMFS's Northwest Regional Administrator determined that the ex-vessel value of the landing is a mandatory field that must be completed by the IFQ first receiver.

NMFS has determined that the ex-vessel value of the landing is a mandatory reporting requirement for several reasons. In order for the states to have the option of adopting the Federal e-ticket to cover their state reporting requirements, the e-ticket must include the items required to be reported on the state fish tickets. The ex-vessel prices are a state reporting requirement for the state to be able to collect excise taxes and fees. The ex-vessel value will be also used in the cost recovery program that is currently being developed by the Council and NMFS. The ex-vessel value is not collected through the economic data collection program forms and is necessary information for that program to measure the economic changes in the fishery for the 5-year review of the program and beyond. The ex-vessel value may also be used by NMFS in required regulatory flexibility analyses for rulemakings.

NMFS expects and requires that the information reported by IFQ first receivers on the e-ticket is true and accurate. If any of the information on

the e-ticket changes after it has been submitted, including the ex-vessel value of the landing, then the e-ticket should be revised. For example, if the price of Pacific whiting is not known until after the e-ticket has been submitted, then the initial e-ticket would report the best estimate of the ex-vessel value and would be revised once the ex-vessel value is known. Because ex-vessel value as reported on the e-ticket may change after sorting or marketing, the first receiver or processor must either edit the e-ticket or submit a revised e-ticket according to state requirements. Similarly, other information on an e-ticket, such as the species and weight in an offload, may change after the original e-ticket has been submitted due to new information from cutting and processing the offload. However, the gross weight of the sorted offload, as observed by the catch monitor should not change, except for the rare occurrence of a data entry error not found upon review prior to e-ticket submittal.

State requirements for editing and revising fish tickets vary (*e.g.* up to 6 years for Oregon versus California which doesn't allow edits but allows tickets to be voided and new tickets entered). In addition, the state regulations can be more conservative than Federal regulation. Because state requirements vary and state regulation can be more conservative, NMFS decided a timeframe for editing or revising e-tickets would be more appropriate in state regulation and is not necessary in Federal regulation.

NMFS has added the ex-vessel value of the landing as a mandatory field to be completed on the e-ticket through the April 4, 2011 memo and corresponding public notice. This rulemaking would update the regulations at § 660.113(b)(4)(i) with language to reflect this mandatory requirement. In addition, this rulemaking proposes to add the new fields listed above to e-tickets.

#### *Updated e-Ticket Hardware/Software Requirements*

Current hardware and software requirements for e-tickets, specified in regulations at § 660.15(d), are insufficient and incorrect. NMFS is proposing to update the hardware and software requirements for e-tickets to reflect more current computer operating systems and the minimum requirements necessary to run the software for e-tickets.

#### *First Receiver Site License*

NMFS proposes several changes that would affect the first receiver site license requirements. First, NMFS

proposes revisions to who is required to have a first receiver site license to require only buyers of fish from vessels making an IFQ landing to have a first receiver site license for each physical location at which they receive, purchase, or take custody, control, or possession of an IFQ landing. The buyer, as represented on the e-ticket, would be required to be the first receiver in all cases.

There has been some confusion regarding the state licensed buyer, as reported on the e-ticket, and the associated first receiver, which is not specifically designated on the e-ticket. In some cases to date, the buyer has not held a first receiver site license. For example, an IFQ first receiver with a site license (Bob) has been contracted by the buyer (Joe) to receive, sort, account for the IFQ groundfish, and fill out the e-ticket in the name of the buyer (Joe). Using this example with the proposed changes to the first receiver site license requirements, Joe would be the one required to have the first receiver site license; Bob would act as an agent for Joe and would report Joe's buyer name and identification number on the e-ticket, but Bob would not be required to have a first receiver site license for this offload. Joe could also fill out the e-ticket himself if so chooses. Either way, Joe's buyer name and identification number would be reported on the e-ticket.

This would help align the state paper fish ticket system with the Federal e-ticket system. It would continue to allow the state buyer to be reported on the ticket for revenue and tax purposes as required by the states. Even though the first receiver site license number would not appear on the e-ticket, the Federal requirement would associate a buyer on an e-ticket as the buyer registered to a Federal first receiver site license.

NMFS acknowledges that this would require some additional buyers to apply for a first receiver site license(s), possibly for multiple locations. It would also require some existing buyers to apply for a first receiver site licenses at additional locations, and to pay the application fee(s). NMFS does not expect this to increase community impacts because many buyers already have their first receiver site licenses and the application fee is \$50. In addition, for buyers sharing a physical location, the catch monitoring plan could be shared among the applicants, reducing the paperwork burden.

NMFS proposes to revise the following regulations to reflect these changes: Prohibitions at § 660.112(b)(2)(i), first receiver site



license requirements at § 660.140(f)(1), (f)(2), (f)(3), and (j)(1).

Second, NMFS proposes to revise the application process for a first receiver site license so that it does not require a separate written request for site inspection. Currently, the regulations require a separate written request for a site inspection that must be included with the application for the first receiver site license. This requirement is redundant. NMFS proposes to revise the regulations at § 660.140(f)(3)(iii)(B) to state that NMFS will contact applicants to arrange an inspection after receiving a complete first receiver site license application, including the proposed catch monitoring plan. In addition, NMFS solicits public comment on a reasonable timeframe between an application for a first receiver site license and NMFS conducting the site inspection. To reduce the costs of running the program, NMFS is considering whether to adopt a policy of batching the site inspections to only conduct inspections in a particular state once a month or within 60 days of receiving an application, and requests comment to assist its consideration of such policy.

Third, NMFS proposes some revisions to merge the effective date language for first receiver site license in to one paragraph. Regulations at § 660.140(f)(2), (f)(5), and (f)(6) would be revised.

Fourth, as described in the above preamble under the section titled, “new process for first receivers and catch monitors to address trucking/transport,” NMFS also proposes to add a requirement to the catch monitoring plan as part of the first receiver site license application to require the IFQ first receiver to detail in the catch monitoring plan how the e-ticket submittal requirements will be met.

#### *Conflict of Interest Regulations for Catch Monitor and Catch Monitor Providers*

The current conflict of interest regulations for catch monitors and catch monitor providers apply to any interest in a business involving vessels and shorebased or floating stationary processor facility. These regulations should have also included “first receivers” for the same reason it included processors. This was an inadvertent omission and NMFS proposes to revise the regulations at § 660.18(c)(1) and (d) to add “first receivers” to the list of businesses.

#### *Catch Monitor Training and Certification*

The regulations at § 660.17(e)(14) list items and responsibilities of the catch monitor regarding training and certification, but are listed under the catch monitor provider section of the regulations. NMFS proposes moving paragraph (e)(14) to the appropriate place under § 660.17(a).

#### *Sorting/Weighing Requirements for Non-Whiting IFQ Species*

The groundfish regulations for the sorting and weighing requirements for non-whiting IFQ species are inconsistent. The prohibitions at § 660.112(b)(2)(ii) makes it unlawful to fail to sort fish received from a IFQ landing prior to first weighing after offloading, except the vessels declared in to the limited entry midwater trawl, Pacific whiting shorebased IFQ may weigh catch on a bulk scale before sorting. The regulations on sorting requirements at § 660.130(d)(2)(i) make a similar statement. The regulations at § 660.140(j)(2)(ix) on catch weighing requirements state that for all other IFQ landings (except for Pacific whiting as mentioned above) a belt or automatic hopper scale may be used to weigh all of the catch prior to sorting. All but the predominant species must then be reweighed.

The prohibition at § 660.112(b)(2)(ii) and the sorting requirements at § 660.130(d)(2)(i) restricts what § 660.140(j)(2)(ix)(A) allows for non-whiting groundfish. The activity listed in § 660.140(j)(2) has occurred in the past in Washington and may still be occurring. The state laws on this have differed, so § 660.140(j)(2) was to allow groundfish to be weighed in a hopper scale, then sorted by species, and each species (or group) weighed back and deducted from original total weight, if it was allowed by state law. This activity has also been previously allowed under an exempted fishing permit for both whiting and non-whiting groundfish.

Therefore, NMFS proposes to revise regulations § 660.112(b)(2)(ii) and § 660.130(d)(2)(i) to make them consistent with § 660.140(j)(2)(ix)(A).

#### *QS Permits and Vessel Accounts*

NMFS proposes several changes that affect QS permits and their corresponding QS accounts and vessel accounts. First, NMFS proposes to add a prohibition at § 660.112(b)(1)(xvi) against fraudulent use of QS accounts or vessel accounts. NMFS originally proposed this addition as part of a suite of proposals presented to the Council for its consideration at its June 2011

meeting, and the change was included as part of the Council's recommendations for this rule. On further consideration, NMFS questions whether this prohibition is needed, and solicits public comment on the need for or any concerns about this prohibition.

Second, NMFS proposes a process for end-of-the-year vessel account reconciliation, especially with regard to implementing the carryover provision for a surplus in a vessel account (unused QP at the end of the year). This is a database and accounting issue to address a fishery that is open year round and setting up a time to reconcile vessel accounts. At its June 2011 meeting, the Council recommended against a proposal that fishing be prohibited for a period of time to address end-of-the-year vessel account reconciliation. Instead, the Council recommended that NMFS populate QS accounts with the next year's available QP or IBQ pounds on or near January 1. After populating QS accounts, QP or IBQ pounds could then be transferred to vessel accounts and any QP or IBQ pound deductions made to vessel accounts for using the carryover provision to cover a deficit in the previous year. Vessel accounts must be cleared of any deficit from the previous year within 30 days of NMFS issuance of QP or IBQ pounds to QS accounts. Then, later in the year once data are available, NMFS would calculate any surplus carryover in each vessel account from the previous year and add that amount to the vessel account. NMFS proposes these end-of-the-year vessel account reconciliation regulations at § 660.140(e)(5)(i).

Third, NMFS proposes to remove references to designating an account manager from the regulations for QS and vessel accounts. In an effort to reduce the paperwork and regulatory burden, NMFS intends to remove the optional requirement for business entities to designate an account manager with NMFS. No later than 2012, account owners will have the capability to designate individuals to have certain roles and associated privileges within their online IFQ system under an “account information” tab. For example, account owners would be able to designate whether an individual can initiate or accept/reject transfers, while others would be designated to only view account balances. The regulations at § 660.140(d)(2)(ii), (d)(3)(i)(D), (e)(2)(ii), and (e)(3)(i)(D) would be revised to remove the reference to designating an account manager.

Fourth, NMFS proposes to revise the regulations at § 660.112(b)(1)(iv) to consistently use the term “deficit”

instead of “overage” in regards to vessel accounts.

Fifth, NMFS proposes to revise regulations at § 660.140(e)(4)(i) regarding annual and daily vessel limits. Language at § 660.140(e)(4)(i) would be expanded to describe what values in a vessel account contribute to the calculation of a vessel limit. The QP Vessel Limit (Annual Limit) is calculated as unused available QPs plus used QPs (landings and discards) plus any pending outgoing transfer of QPs. The Unused QP Vessel Limits (Daily Limit) is calculated as unused available QPs plus any pending outgoing transfer of QPs. These changes would clarify the calculation and allow tracking of pass through QP. For example, QP that are transferred into vessel account 1 and subsequently transferred to vessel account 2 would not be counted towards compliance with vessel limits in vessel account 1 once transferred to the vessel account 2 (*i.e.*, pass through QP). Regulations would be revised to specify these calculations.

Finally, NMFS proposes clarifications to the regulations on changes in ownership for QS permits/account and vessel accounts as described earlier in the preamble under “Corrections/consistency” for all commercial groundfish sectors.

#### *Adaptive Management Program*

The trawl catch share program allocated 10 percent of the nonwhiting QS for an adaptive management program (AMP). For the first two years of the program, the annually issued QP derived from this allocation is passed through to the other QS owners in proportion to their QS. The catch share program specifies that the Council will develop alternative criteria for distribution of the AMP QP beginning in year three of the program. The Council considered that such alternative criteria may not be ready by 2013 and that no procedure existed for distribution of the AMP QP should this occur, and recommended extending the pass through of AMP QP through 2014 in the event that the AMP distribution criteria are not finalized before then. Accordingly, this regulation would extend the pass-through to 2014, unless implementation occurs sooner. In addition, this rule proposes to cross reference the AMP language in the section of the regulations at § 660.140(d)(1) that explains the annual allocation for the Shorebased IFQ Program. Regulatory sections 660.140(d)(1)(ii)(A) and (I)(2) would be affected by this rule.

#### *Any Size Halibut Counts Against IBQ*

For Pacific halibut caught north of 40°10' N. latitude, halibut of any size (greater than, equal to, or less than 32 inches) counts against the individual bycatch quota (IBQ) pounds. This is not a change from existing regulations, but NMFS proposes to further clarify this at § 660.140(d)(1)(ii)(C).

#### *Exemption From Prohibition on Processing at Sea*

In January 2011, NMFS implemented a prohibition on processing at-sea for the IFQ fishery with some exceptions, as specified at § 660.112(b)(1)(xii). Processing is defined in groundfish regulations at § 660.11 as “\* \* \* the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done. \* \* \* (1) At-sea processing means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shore-based or on the water \* \* \*”

The prohibition on processing at sea in the Shorebased IFQ Program was described in the preamble to the proposed rule dated August 31, 2010 (75 FR 53380). The previous regulations before the trawl rationalization program was implemented did not include a general prohibition on processing all groundfish at-sea for non-whiting trawl vessels landing groundfish at shorebased processors. In other words, previously, the non-whiting trawl vessels were not prohibited from processing non-whiting catch. The Shorebased IFQ Program envisioned that participants would not process their catch at sea and that all catch was delivered to shorebased processors for further processing. This was intended to maintain the character of the fleet and the coastal communities that relied on this fleet delivering their catch to processors on land. During the Council's review of the draft regulations over 2010 and its regulatory deeming process, the Council specified that processing at sea should be prohibited under the Shorebased IFQ Program with two exceptions. The two exceptions were for processing that was already allowed in the groundfish fishery before the trawl rationalization program and included exemptions for the following: (1) Any vessel that is 75-ft (23-m) or less length overall that harvests whiting and, in

addition to heading and gutting, cuts the tail off and freezes the whiting, is not considered to be a catcher/processor nor is it considered to be processing fish, and (2) a vessel that has a sablefish at-sea processing exemption, defined at § 660.25(b)(3)(iv)(D), may process sablefish at-sea in both the limited entry fixed gear primary sablefish fishery or in the Shorebased IFQ Program.

At the Council's March, April and June 2011 meetings, in response to public testimony, Oregon Department of Fish and Wildlife (ODFW) requested that the Council consider an exemption from the prohibition on processing at sea in the Shorebased IFQ Program (see Agenda Item H.2.c, ODFW Report 2, March 2011; Agenda Item E.6.b, ODFW Letter (excerpt), June 2011). The public testimony disclosed that some participants in the shorebased non-whiting fishery had invested in processing equipment and developed markets for non-whiting groundfish glazed (frozen) at sea while the trawl rationalization program was still under development.

At its June 2011 meeting, the Council decided that it had not intended to negatively impact any at-sea non-whiting processing operations that existed prior to the announcement of the prohibition on processing at sea in the Shorebased IFQ Program. The Council recommended an exemption from the prohibition on processing at sea for select participants in the Shorebased IFQ Program that could prove they had legally processed groundfish other than Pacific whiting at sea before the trawl rationalization program was implemented. To qualify under the Council's recommendation, vessels registered to a limited entry trawl permit must have legally processed groundfish other than Pacific whiting at sea prior to July 20, 2010, as verified by fish tickets, dock receiving tickets, landing receipts, or other official documents. This exemption would only apply to the vessel while operating under the Shorebased IFQ Program regardless of the type of gear used. The Council recommended the date of July 20, 2010, as the cut-off date for qualification to ensure that processing-prohibition exemptions would be provided only to individuals that had been processing at-sea without prior knowledge of the upcoming prohibition. Accordingly, this proposed rule incorporates that cut-off date. However, the regulation to prohibit processing at sea for the Shorebased IFQ Program was proposed and published in the **Federal Register** for the first time on August 31, 2010 (75 FR 53380). NMFS is considering whether to adjust the cut-off

date for qualification to August 31, 2010, and specifically requests comment on the implications of such a change from the Council motion.

The Council expressed its intent to structure the exemption from the prohibition on processing at sea in the Shorebased IFQ Program in a manner similar to the previous exemption that was created under Amendment 14 for the sablefish permit stacking program and implemented in a rule that published March 2, 2006 (71 FR 10614). Thus, similar to the existing exemption for sablefish at sea processing specified at § 660.25(b)(3)(iv)(D), the at-sea processing exemption for non-whiting groundfish in the Shorebased IFQ Program would be open to applicants during a one-time application process during early 2012. It would be issued to the particular vessel and the permit and/or vessel owner who requests the exemption and meets the qualifying requirements. The exemption would not be part of the limited entry permit and would not be transferable to any other vessel, vessel owner, or permit owner for any reason. The non-whiting at-sea processing exemption would expire upon registration of the vessel to a new owner or if the vessel is totally lost. After NMFS conducts an application and appeals process (expected to be finished in spring/summer of 2012) and issues any resulting exemptions, processing at sea by qualified participants would be allowed.

To propose this new exemption from the prohibition on processing non-whiting groundfish at sea for the Shorebased IFQ Program and the one-time application and appeals process for the exemption, NMFS proposes revisions to the regulations at § 660.112(b)(1)(xii) on prohibitions, and a new paragraph at § 660.25(b)(6) on the exemption and application process.

In addition, the Council's motion from its June 2011 meeting included a statement that "Regulatory language should also include an appropriate conversion factor and/or an appropriate process for calculating a conversion factor for glazed groundfish." In a letter to the Council (Agenda Item E.6.b, ODFW Letter (excerpt), June 2011), ODFW recommended a weight conversion factor as well as a process for calculating a conversion factor as follows: "The following conversion applies to vessels landing sorted catch that is frozen (glazed) in the Shorebased IFQ Program. A conversion factor of 0.95 must be applied when there are fewer than 60 individuals of any species or species group in a single landing. Conversion factors must be calculated for each landing for each species or

species group when there are 60 or greater individuals in a category (=species or species group) in a single landing as follows: Weigh a sample of at least 20 glazed fish to obtain the glazed weight; Completely remove glaze from individual fish making up the sample; Re-weigh the sample to obtain the non-glazed weight; Divide the non-glazed weight by the glazed weight to obtain the conversion factor; A separate conversion factor may be calculated for each size grade of a species, but may only be applied to landings of that size grade; documentation of this calculation must be retained with the dock receiving ticket."

When NMFS implemented weight conversion factors for the Shorebased IFQ Program, NMFS stated that the weight conversion factors used on electronic fish tickets (a Federal reporting requirement) must be a consistent coastwide value. In the preamble to the proposed rule published on August 31, 2010 (75 FR 53380), NMFS stated the reasons why a consistent coastwide value was necessary, including providing consistency in catch estimates between states, preventing artificial influences on individual landings choices, and benefiting NMFS's ability to track landings values. NMFS based the Federal weight conversion factors on published values. The weight conversions for dressed IFQ species were derived from an Alaska Sea Grant College Program publication titled, "Recoveries and Yields from Pacific Fish and Shellfish" (Marine Advisory Bulletin number 37, 2004). For Pacific whiting that has been dressed (headed and gutted) with tails removed, the weight conversion was derived from the value for pollock as published at § 679 for the Alaska groundfish fishery. These values are codified at § 660.60(h)(5)(ii)(B).

ODFW's proposed conversion factor is not a consistent value by species and, potentially, is not a consistent value within a species for different size grades or volumes of fish. Because the online IFQ system automatically applies the weight conversion factor depending on the species condition code reported on the electronic fish ticket, a variable conversion factor is not practical. In addition, NMFS is not aware of published values for glazed groundfish species nor of a consistent coastwide value used by the states for glazed groundfish species. Therefore, NMFS is not proposing a Federal weight conversion factor for freezing or glazing non-whiting groundfish species at this time. The weight reported on the electronic fish ticket for glazed non-

whiting groundfish should be the actual scale weight with no conversion factor applied. The states may continue to have a state weight conversion factor for freezing and glazing on their state fish ticket. NMFS is aware of the need to develop conversion factors for freezing and glazing and to review existing Federal weight conversion factors specified in the groundfish regulations. NMFS brought this issue forward as a potential future Council action at the Council's April and June 2011 meetings (Agenda Item E.6.b, NMFS Report 1, June 2011). However, due to workload, this has not been a priority for NMFS or the Council. NMFS specifically requests public comment on this issue.

#### **Changes Applicable to the At-Sea Whiting Fisheries (MS Coop Program and C/P Coop Program)**

##### *Severability of MS/CV Endorsements (MS Coop Program Only)*

With implementation of the trawl rationalization program, an MS/CV endorsement was issued to each limited entry trawl permit that met specified qualification requirements for participation in the mothership sector of the whiting fishery. These endorsements included a whiting catch history assignment (CHA) based on the catch history of the individual permits during the allocation period. There are some permits that during the qualifying period participated primarily in the shoreside fishery but had some relatively minor amounts of catch history in the at-sea whiting mothership fishery. These permits received MS/CV endorsements with small amounts of whiting CHA. For the small amounts of mothership whiting catch history that some permits received, the burden (transaction costs) of joining a coop may not be worth the benefits that permit's CHA would bring to the coop's allocation. These permit owners could sell their limited entry trawl permits to mothership whiting fishery participants; however, they might not want to because they need a limited entry trawl permit to participate in the Shorebased IFQ Program. If permit owners with small amounts of CHA join coops each year, there may be transaction costs that offset the benefits of the small CHA, reducing the overall efficiency and benefits from the trawl rationalization program. If permits with small CHA amounts do not join a coop, their CHA would automatically be assigned to the non-coop fishery where it may go unharvested. If all other MS/CV-endorsed permits have joined coops and the owners of the permits with small CHAs do not have interest in gearing up

for the mothership whiting fishery or incurring the burden associated with joining a coop, it may contribute toward an incentive for MS/CV-endorsed permits to enter the non-coop fishery instead of joining a coop, decreasing the effectiveness of the trawl rationalization program. In order to address these concerns, the Council took final action at their June 2011 meeting to allow MS/CV-endorsed permit owners to change the registration of the MS/CV endorsement and its associated CHA from one limited entry trawl permit to another (called severability in Council documents).

Under the Council's recommendation, each MS/CV endorsement would be permanently linked with its CHA as originally issued by NMFS and could not be divided or registered separately to two different limited entry trawl permits. In addition to being linked together, an MS/CV endorsement and CHA would only be able to be registered to a limited entry trawl permit, as required in current regulations, and any change in registration of an MS/CV endorsement and CHA would be required to be to another limited entry trawl permit. Ownership of an MS/CV endorsement and associated CHA would be required to be the same as the owner of the limited entry trawl permit to which the endorsement is registered. Multiple MS/CV endorsements and associated CHA would be allowed to be registered to a single limited entry trawl permit. If multiple endorsements are registered to a single limited entry trawl permit, the whiting CHA amount (expressed as a percent) would remain in the amount that it was originally issued by NMFS and would not be combined to a single larger CHA, unless two or more MS/CV-endorsed permits were to be combined for purposes of increasing the size endorsement, as specified at § 660.25(b)(4)(ii)(B). Because of this, NMFS would establish a unique identifier for each individual MS/CV endorsement and associated CHA listed on a limited entry trawl permit for tracking purposes. If this requirement is implemented, NMFS would need to reissue all MS/CV-endorsed permits with these unique endorsement identifier numbers attached to the permits.

With this proposed action, MS/CV-endorsed limited entry trawl permit owners would have the following three alternative permit arrangements available to them:

(1) Change registration of an MS/CV endorsement and associated CHA from one limited entry trawl permit to another. This is the new proposed option and could result in the receiving

permit having two or more MS/CV endorsements and associated CHAs listed on the permit.

(2) Combine two limited entry trawl permits to get a single limited entry trawl permit with a larger size endorsement. If, for example, both of the limited entry trawl permits have an MS/CV endorsement on them, the single resulting limited entry trawl permit would have a single MS/CV endorsement and a single larger CHA. This requirement is in existing regulations at § 660.150(g)(2)(iv) on combining permits.

(3) Follow number (1) above and then combine two limited entry trawl permits to get a single limited entry trawl permit with a larger size endorsement. This is a mix of the new proposed option and the existing regulations on combining permits and results in a single limited entry trawl permit with a larger size endorsement and multiple MS/CV endorsements and associated CHAs listed on the permit (*i.e.*, not combined into a single MS/CV endorsement and larger CHA).

As outlined in the three permit arrangements described above, combining limited entry trawl permits would not require combining endorsements associated with those permits. For MS/CV-endorsed permit owners that have already combined permits before January 1, 2012, a window of time would be provided to change that permit arrangement by sending a letter to NMFS. Regulations for this opportunity are proposed at § 660.150(g)(2)(vi).

With regards to the timing of a change in endorsement registration, the MS/CV endorsement and associated CHA can only be registered to another limited entry trawl permit during the limited entry permit renewal period, from September 1 through December 31 each year, and effective the following year. The first time that a change in endorsement registration would be permitted would be during the permit renewal period from September 1 through December 31, 2012, to be effective in 2013.

Under the proposed rule, a limited entry trawl permit owner with more than one MS/CV endorsement may join more than one coop, or join both a coop and the non-coop fishery; however, each endorsement and its associated CHA may only be assigned to one coop or the non-coop fishery. Additionally, each coop would also continue to be required to include at least 20 percent of all MS/CV-endorsed permits as members.

Regulatory sections § 660.25(b)(3)(v), (b)(4)(ii)(B), and (b)(4)(iv)(D), and § 660.150(c)(2)(i)(A), (d)(1)(iii)

introductory text, (g)(1)(iii), (g)(2)(iv) through (vi) would be affected by this proposed rule.

#### *Responsibility for Daily Testing of At-Sea Scales (MS Coop Program and C/P Coop Program)*

NMFS proposes regulations to make it more clear who is responsible for the daily testing of at-sea scales. NMFS interprets current regulations to require the vessel operator to ensure that the vessel crew performs the daily testing of at-sea scales, including both belt scales and platform scales. The regulations at § 660.15(b)(3) would be revised accordingly to make this interpretation explicit.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

The Council prepared a final environmental impact statement (EIS) for Amendment 20 and Amendment 21 to the Pacific Coast Groundfish FMP; a notice of availability for each of these final EISs was published on June 25, 2010 (75 FR 36386). An environmental assessment (EA) has been prepared for the following trailing actions: (1) An allocation of Pacific halibut bycatch to the trawl fishery, and (2) an exemption from the prohibition on processing at sea for qualified participants in the Shorebased IFQ Program. The Amendments 20 and 21 EISs and the draft EA are available on the Council's Web site at <http://www.pcouncil.org/or> on NMFS' Web site at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Trawl-Program/index.cfm>. The remaining regulatory changes in this proposed rule either required no further analysis under the National Environmental Policy Act (NEPA) or were categorically excluded from the requirement to prepare a NEPA analysis.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the

**SUMMARY** section of the preamble. A copy of the IRFA is available from NMFS (see **ADDRESSES**) and a summary of the IRFA, per the requirements of 5 U.S.C. 603(a) follows:

As of August 2011, there are 176 limited entry trawl permits and 6 mothership processor permits. The limited entry trawl permits are associated with three groups of trawlers. Some trawlers (132) deliver to shorebased processing plants. Some of these trawlers as well as other trawlers (total = 36) deliver to mothership processors (6). Some trawlers are catcher-processors (10)—vessels that both trawl and process fish. In January 2011, NMFS and the Pacific Fishery Management Council set up a new management program called the trawl rationalization program. This program significantly changes how two of these groups work. Shore trawlers now fish under their own set of individual species quotas by vessel. In prior years, there were different rules for shore trawlers depending on their target catch. Nonwhiting trawlers fished under common trip limits while whiting trawlers fished under a common quota without trip limits. In prior years, the mothership fishery consisted of independent at-sea processors each receiving catch from several trawlers. Now the mothership fishery works as a coop where catcher-vessels and motherships work together collectively. The catcher-processor fleet continues as a single coop.

A specific set of groundfish species and bycatch of Pacific halibut are managed under the trawl rationalization program. Human observation and electronic reporting tools account for all catch of these species. Computer programs match the catch against individual species quotas (quota pounds or QP) or coop allocations. All vessels must carry observers who watch and measure the harvests and discards of these groundfish. All shore plants must have catch monitors to watch all vessel offloads and record the species and amounts landed. In the shorebased fishery, online accounting programs issue and track quota shares, quota pounds, and catch by species. Computer programs compare fish tickets to catch monitor reports and calculate the quota pounds landed by an individual vessel. Observer reports are used to account for the vessel's discards. An online "banking system" is used to debit landings and discards against the vessel's quota pounds. Quota pounds are deposited to a vessel's account based on a transfer from a quota share account or from another vessel account.

As discussed in the summary above, this proposed rule would revise the Pacific coast groundfish trawl rationalization program. These revisions would affect not only limited entry trawl fisheries but also other fisheries including the limited entry fixed gear and open access fisheries. Discussed above are revisions that would address the movement between limited entry and open access fisheries. Other revisions concern vessels fishing in different management areas within one trip. Rules about permit ownership and transfer have been edited. The regulations would clarify the relationship of Amendment 21 to previous amendments concerning how certain species are allocated between the limited entry and open access sectors. Participants in the fishery would find the regulations easier to comply with and easier to understand. There would also be less confusion as to how fish are allocated.

The proposed actions would establish new or modified processes concerning how much fish can be allocated and harvested. A new process involving the use of interim allocations should the biennial management and specification process not be completed in a timely way would be established based on similar processes used by emergency rule making for 2011. This would reduce the potential delay in the annual allocation of quota pounds. The "carry-over" process would be modified so that there is no need to close the fishery in December for end-of-the-year account reconciliation. The Adaptive Management pass-through of quota pounds process would be extended through 2014 or the implementation of the Adaptive Management Program details, whichever is earlier. These actions would provide benefits as they avoid major shut downs of the fishery and they would facilitate multi-year planning.

Offload monitoring procedures would be revised. There would also be new procedures associated with electronic fish ticket reporting when trawlers land fish at one site but the fish are trucked to another site for processing. These procedures would also apply when the fish ticket is completed in another office as compared to the landing site. The electronic fish ticket format would be revised to better match the state paper fish ticket requirements. These revised procedures and changes to the fish ticket format and completion process would provide benefits by reducing the monitoring burden on fishermen and processors. They would provide flexibility to first receivers and fish buyers. They would also aid adoption of

the electronic fish ticket by the states and would increase the potential that redundant data collection systems are reduced. Most importantly, they would improve the timeliness and accuracy of the data reported.

The proposed action would expand the list of exemptions to the prohibition on processing at sea. Fishermen who could show that they were legally processing nonwhiting groundfish prior to the implementation of Amendment 20 would be able to apply for an exemption to continue processing at sea. This exemption would address the Council intent not to negatively impact these operations.

Revising the halibut trawl bycatch mortality limit formulas would provide benefits to the trawl fishery as they provide slightly higher catch compared to the existing regulations while continuing to provide increased halibut opportunities for non-trawl fisheries. It is recognized that increased halibut mortality by trawlers would mean less halibut for other commercial and recreational fisheries. However these revisions would move the trawl fishery closer to the Council's original goal of 50 percent reduction of halibut mortality by the trawl fleet.

To participate in the mothership fishery, harvesting vessels must have an endorsed permit. The endorsement has an associated catch history amount, called a catch history assignment in regulations. Vessels wishing to sell their catch history to a coop must sell both their limited entry trawl permit and MS/CV endorsement. The proposed regulations would "sever" the MS/CV endorsement with its catch history assignment from the associated limited entry permit. Under the revised regulations, fishermen could sell or assign their MS/CV endorsements and associated catch history assignments while keeping their permits so they could continue to fish in other limited entry fisheries. This change would aid coop formation and may minimize the costs of joining a coop for fishermen.

The following provides some perspective on the economic dimensions of the fisheries. Over the years 2005–2009, the limited entry trawl fishery has averaged annual inflation adjusted revenues of about \$57 million and total landings of about 215,000 tons. Pacific whiting ex-vessel revenues have averaged about \$25 million. However, differences between years have varied greatly. Whiting trawlers harvested about 216,000 tons of whiting worth about \$51 million in ex-vessel revenues in 2008. Revenues were high because of high landings and high prices. Ex-vessel prices of \$235 per ton were the highest

on record. In comparison, the 2007 fishery harvested about 214,000 tons worth \$29 million at an average ex-vessel price of about \$137 per ton. The 2009 fishery harvested about 99,000 tons worth about \$12 million at a price of \$120 per ton.

While the Pacific whiting fishery has grown in importance in recent years, harvests in the non-whiting component of the limited entry trawl fishery have declined steadily since the 1980s. Non-whiting trawl ex-vessel revenues in the fishery peaked in the mid-1990s at about \$40 million. Following the passage of the Sustainable Fisheries Act (1996) and the listing of several species as overfished, harvests became increasingly restricted and landings and revenues declined steadily until 2002. Over the years 2005 to 2009, non-whiting groundfish ex-vessel revenues have averaged \$27 million annually. These revenues have ranged from \$24 million (2005) to \$32 million (2008). The 2009 fishery earned \$30 million in ex-vessel revenues. Total shorebased revenues (whiting and non-whiting) have averaged about \$36 million annually over the last five years. (*Note:* Ex-vessel revenues are just one indicator of “revenue”; they understate the wholesales, export, and retail revenues earned from the fishery. Data on these other indicators is either incomplete or unavailable.)

This proposed rule would regulate businesses that harvest groundfish and processors that wish to process limited entry trawl groundfish. Under the RFA, the term “small entities” includes small businesses, small organizations, and small governmental jurisdictions. For small businesses, the SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time,

temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$7.0 million. The RFA defines a small organization as any nonprofit enterprise that is independently owned and operated and is not dominant in its field. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

NMFS makes the following conclusions based primarily on analyses associated with fish ticket data and limited entry permit data, available employment data provided by processors, information on the charterboat and Tribal fleets, and available industry responses to ongoing surveys on ownership. The non-trawl businesses are the following fleets: Limited entry fixed gear (approximately 150 companies), open access groundfish (1,100), charterboats (465), and the Tribal fleet (four Tribes with 66 vessels). Available information on average revenue per vessel suggests that all the entities in this group can be considered small. In addition, the proposed rules would change requirements associated with catch monitors and observers that are currently being supplied to the fishery by five companies. Based on analysis done on observer issues by the NMFS Alaska Regional Office, these five companies are also small companies.

For the trawl sector, there are 177 permit owners. Nine limited entry trawl permits are attached to catcher-processing vessels and are considered “large” companies. Of the remaining 168 limited entry permits, 25 limited entry trawl permits are either owned or closely associated with a “large” shorebased processing company or with a non-profit organization who considers itself a “large” organization. Nine other permit owners indicated that they were large “companies.” Almost all of these companies are associated with the shorebased and mothership whiting fisheries. The remaining 134 limited entry trawl permits are projected to be held by “small” companies. Three of the six mothership processors are “large” companies. Within the 14 shorebased whiting first receivers/processors, there are four “large” companies. Including the shorebased whiting first receivers, in 2008, there were 75 first receivers that purchased limited entry trawl groundfish. There were 36 small purchasers (less than \$150,000); 26 medium purchasers (purchases greater than \$150,000 but less than \$1,000,000); and 13 large purchasers (purchases

greater than \$1.0 million). These regulations also affect the five companies that provide observer and catch monitor services to the industry. Based on analyses and conclusions undertaken for these companies by the NMFS Alaska Regional Office, these companies are considered small companies.

As indicated above, the actions proposed by this rule would be generally beneficial to the various sectors of the fishery. The only explicit cost impact is the expansion of the requirement that all fish buyers obtain a \$50 first receiver site license. Therefore, negative impacts to the industry, if any, appear to be minimal and do not favor large entities over small entities.

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. OMB control number 0648–0611, Rationalization of the Pacific Coast Groundfish Trawl Limited Entry Fishery, would be revised to include an application for an exemption from the prohibition on processing nonwhiting groundfish at sea in the Shorebased IFQ Program. Public reporting burden for the revised OMB control number 0648–0611 is estimated to average 3 hours per response (543 responses). OMB control number 0648–0619, Northwest Region Groundfish Trawl Fishery Monitoring and Catch Accounting Program, would be revised to include the additional reporting requirements for IFQ first receivers on electronic fish tickets, updated hardware and software requirements for electronic fish tickets, and an updated process for first receivers and catch monitors to address offload and trucking issues. Public reporting burden for the revised OMB control number 0648–0619 is estimated to average 30 minutes per response (6,059 responses). OMB control number 0648–0620, Pacific Coast Groundfish Trawl Rationalization Program Permit and License Information Collection, would be revised to include a form for changing the registration of MS/CV endorsements and associated catch history assignments from one limited entry trawl permit to another and changes to the first receiver site license application requirements. Public

reporting burden for the revised OMB control number 0648–0620 are estimated to average 30 minutes per response (1,955 responses). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Northwest Region, at the ADDRESSES section above; and to OMB by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the

destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 fish over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000 fish.

Since 1999, annual Chinook bycatch has averaged about 8,450 fish. The Chinook ESUs most likely affected by the whiting fishery has generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior “no jeopardy” conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or

no bycatch of coho, chum, sockeye, and steelhead.

The Southern Distinct Population Segment (DPS) of green sturgeon was listed as threatened under the ESA (71 FR 17757, April 7, 2006). The southern DPS of Pacific eulachon was listed as threatened on March 18, 2010, under the ESA (75 FR 13012). NMFS has reinitiated consultation on the fishery, including impacts on green sturgeon, eulachon, marine mammals, and turtles.

After reviewing the available information, NMFS has concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, the action would not jeopardize any listed species, would not adversely modify any designated critical habitat, and would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

This proposed rule was developed after meaningful consultation and collaboration, through the Council process, with the Tribal representative on the Council. The FMP Amendment and these proposed regulations have no direct effect on the Tribes; these proposed regulations were deemed by the Council as “necessary or appropriate” to implement the FMP as amended.

#### List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: August 26, 2011.

**Samuel D. Rauch III**,  
Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.

For the reasons stated in the preamble, 50 CFR chapter VI is proposed to be amended as follows:

#### 50 CFR Chapter VI

#### PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.11, add the definition for “Dock ticket” in alphabetical order to read as follows:

##### § 660.11 General definitions.

\* \* \* \* \*

*Dock ticket* means a form accepted by the state to record the landing, receipt, purchase, or transfer of fish.

\* \* \* \* \*

3. In § 660.12, revise paragraph (d)(2) to read as follows:



**§ 660.12 General groundfish prohibitions.**

\* \* \* \*

(d) \* \* \*

(2) Make a false statement on an application for issuance, renewal, permit registration, vessel registration, replacement of a limited entry permit, or a declaration of ownership interest in a limited entry permit.

\* \* \* \*

4. In § 660.13, revise paragraph (d)(5)(iv)(A)(23) and add paragraph (d)(5)(iv)(A)(26) to read as follows:

**§ 660.13 Recordkeeping and reporting.**

\* \* \* \*

(d) \* \* \*

(5) \* \* \*

(iv) \* \* \*

(A) \* \* \*

(23) Open access Coastal Pelagic Species net gear,

\* \* \* \*

(26) Open access California gillnet complex gear.

\* \* \* \*

5. In § 660.14, revise paragraph (d)(4)(iii) and (vii) to read as follows:

**§ 660.14 Vessel Monitoring System (VMS) requirements.**

\* \* \* \*

(d) \* \* \*

(4) \* \* \*

(iii) *Permit exemption.* If the limited entry permit had a change in vessel registration so that it is no longer registered to the vessel (for the purposes of this section, this includes permits placed into “unidentified” status), the vessel may be exempted from VMS requirements providing the vessel is not used to fish in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore) for the remainder of the fishing year. If the vessel is used to fish in this area for any species of fish at any time during the remaining portion of the fishing year without being registered to a limited entry permit, the vessel is required to have and use VMS.

\* \* \* \*

(vii) *Valid exemption reports.* For an exemption report to be valid, it must be received by NMFS at least 2 hours and not more than 24 hours before the exempted activities defined at paragraphs (d)(4)(i) through (iv) of this section occur. An exemption report is valid until NMFS receives a report canceling the exemption. An exemption cancellation must be received at least 2 hours before the vessel re-enters the EEZ following an outside areas exemption; at least 2 hours before the vessel is placed back in the water following a haul out

exemption; at least 2 hours before the vessel resumes fishing for any species of fish in state or Federal waters off the States of Washington, Oregon, or California after it has received a permit exemption; or at least 2 hours before a vessel resumes fishing in the open access fishery after a long-term departure exemption. If a vessel is required to submit an activation report under paragraph (d)(2)(i) of this section before returning to fish, that report may substitute for the exemption cancellation. Initial contact must be made with NMFS OLE not more than 24 hours after the time that an emergency situation occurred in which VMS transmissions were disrupted and followed by a written emergency exemption request within 72 hours from when the incident occurred. If the emergency situation upon which an emergency exemption is based is resolved before the exemption expires, an exemption cancellation must be received by NMFS at least 2 hours before the vessel resumes fishing.

\* \* \* \*

6. In § 660.15, revise paragraphs (b)(3), and (d)(1) through (3) to read as follows:

**§ 660.15 Equipment requirements.**

\* \* \* \*

(b) \* \* \*

(3) *Daily testing.* The vessel operator must ensure that the vessel crew test each required scale daily and ensure that each scale meets the maximum permissible error (MPE) requirements described at paragraph (b)(4) of this section.

\* \* \* \*

(d) \* \* \*

(1) *Hardware and software requirements.* A personal computer system with the following minimum requirements:

(i) Processor: 500-megahertz (MHz) or higher processor;

(ii) Random Access Memory (RAM): 256 megabytes (MB) or higher;

(iii) Hard disk space:

(A) If already have MS Access 2007 or 2010, 200 MB available disk size.

(B) If loading the MS Access 2007 runtime, then 700 MB available disk size.

(iv) Monitor: 1024 x 768 or higher display resolution;

(v) Operating system: Microsoft Windows XP with Service Pack (SP) 2, Windows Server 2003 with SP1, or later operating system such as Windows Vista or Windows 2007;

(vi) Software: Microsoft Access 2007 or Microsoft Access 2010, or a runtime version provided by the Pacific States Marine Fisheries Commission.

(2) *NMFS-approved software standards and Internet access.* The IFQ first receiver is responsible for obtaining, installing, and updating electronic fish tickets software either provided by Pacific States Marine Fisheries Commission, or compatible with the data export specifications specified by Pacific States Marine Fisheries Commission and for maintaining Internet access sufficient to transmit data files. Requests for data export specifications can be submitted to: *Attn:* Electronic Fish Ticket Monitoring, National Marine Fisheries Service, Northwest Region, Sustainable Fisheries Division, 7600 Sand Point Way, NE., Seattle, WA 98115.

(3) *Maintenance.* The IFQ first receiver is responsible for ensuring that all hardware and software required under this subsection are fully operational and functional whenever they receive, purchase, or take custody, control, or possession of an IFQ landing. “Functional” means that the software requirements and minimum hardware requirements described at paragraphs (d)(1) and (2) of this section are met and data transmissions to Pacific States Marine Fisheries Commission can be executed effectively by the equipment.

\* \* \* \*

7. In § 660.17, revise paragraph (a) and remove paragraph (e)(14) to read as follows:

**§ 660.17 Catch monitors and catch monitor service providers.**

(a) *Catch monitor program training and certification.* Catch monitor certification authorizes an individual to fulfill duties as specified by NMFS while under the employ of a certified catch monitor provider.

(1) A training certification signifies the successful completion of the training course required to obtain catch monitor certification. This endorsement expires when the catch monitor has not been deployed and performed sampling duties as required by the catch monitor program office for a period of time, specified by the catch monitor program, after his or her most recent debriefing. The catch monitor can renew the certification by successfully completing training once more.

(2) *Catch monitor program annual briefing.* Each catch monitor must attend an annual briefing prior to his or her first deployment within any calendar year subsequent to a year in which a training certification is obtained. To maintain certification, a catch monitor must successfully complete the annual briefing, as specified by the catch monitor program. All briefing attendance, performance, and conduct



standards required by the catch monitor program must be met.

(3) *Maintaining the validity of a catch monitor certification.* After initial issuance, a catch monitor must keep their certification valid by meeting all of the following requirements specified below:

(i) Successfully perform their assigned duties as described in the Catch Monitor Manual or other written instructions from the catch monitor program.

(ii) Accurately record their data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(iii) Not disclose collected data and observations made on board the vessel or in the first receiver facility to any person except the owner or operator of the observed vessel, first receiver management or an authorized officer or NMFS.

(iv) Successfully complete NMFS-approved annual briefings as prescribed by the catch monitor program.

(v) Successful completion of a briefing by a catch monitor consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the catch monitor program.

(vi) Successfully meet all expectations in all debriefings including reporting for assigned debriefings.

(vii) Submit all data and information required by the catch monitor program within the program's stated guidelines.

\* \* \* \* \*

8. In § 660.18, revise paragraphs (c)(1)(i) through (iii) and (d)(1) through (3) to read as follows:

**§ 660.18 Certification and decertification procedures for catch monitors and catch monitor providers.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Any ownership, mortgage holder, or other secured interest in a vessel, first receiver, shorebased or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(ii) Any business involved with selling supplies or services to any vessel, first receiver, shorebased or floating stationary processing facility; or

(iii) Any business involved with purchasing raw or processed products from any vessel, first receiver,

shorebased or floating stationary processing facilities.

\* \* \* \* \*

(d) \* \* \*

(1) Any ownership, mortgage holder, or other secured interest in a vessel, first receiver, shorebased or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(2) Any business involved with selling supplies or services to any vessel, first receiver, shorebased or floating stationary processing facility; or

(3) Any business involved with purchasing raw or processed products from any vessel, first receiver, shorebased or floating stationary processing facilities.

\* \* \* \* \*

9. In § 660.25,

a. Remove paragraph (b)(3)(iv)(D);

b. Revise paragraphs (b)(1)(iii) and (v), (b)(3)(i), (b)(3)(iv)(A)(1) and (2), (b)(3)(iv)(C)(4) and (5), (b)(3)(v), (b)(3)(vii), (b)(4)(ii)(B), (b)(4)(iv)(A) and (C), (b)(4)(v)(C) and (D), (b)(4)(vi)(B), (b)(4)(vii) introductory text, (b)(4)(vii)(F), (b)(4)(viii), (b)(4)(ix) and (f);

c. Add paragraphs (b)(4)(iv)(D) and (b)(6) to read as follows:

**§ 660.25 Permits.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) *Registration.* Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, or replaced. If the permit will be used with a vessel other than the one registered on the permit, the permit owner must register that permit for use with the new vessel through the SFD. The reissued permit must be placed on board the new vessel in order for the vessel to be used to fish in the limited entry fishery.

(A) For all limited entry permits, including MS permits, MS/CV-endorsed permits, and C/P-endorsed permits when they are not fishing in the at-sea whiting fisheries, registration of a limited entry permit to be used with a new vessel will take effect no earlier than the first day of the next major limited entry cumulative limit period following the date SFD receives the change in vessel registration form and the original permit.

(B) For MS permits, MS/CV-endorsed permits, and C/P-endorsed permits when they are fishing in the at-sea whiting fisheries, registration of a limited entry permit to be used with a new vessel will take effect on the date NMFS approves and issues the permit.

\* \* \* \* \*

(v) *Initial administrative determination.* SFD will make a determination regarding permit endorsements, renewal, replacement, change in permit ownership and change in vessel registration. SFD will notify the permit owner in writing with an explanation of any determination to deny a permit endorsement, renewal, replacement, change in permit ownership or change in vessel registration. The SFD will decline to act on an application for permit endorsement, renewal, replacement, or change in registration of a limited entry permit if the permit is subject to sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

\* \* \* \* \*

(3) \* \* \*

(i) *"A" endorsement.* A limited entry permit with an "A" endorsement entitles the vessel registered to the permit to fish in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement, except for sablefish harvested north of 36° N. lat. during times and with gears for which a sablefish endorsement is required. See paragraph (b)(3)(iv) of this section for provisions on sablefish endorsement requirements. An "A" endorsement is affixed to the limited entry permit. The limited entry permit with an "A" endorsement may be registered to another person (*i.e.*, change in permit ownership), or to a different vessel (*i.e.*, change in vessel registration) under paragraph (b)(4) of this section. An "A" endorsement expires on failure to renew the limited entry permit to which it is affixed. An MS permit is not considered a limited entry "A"-endorsed permit.

\* \* \* \* \*

(iv) \* \* \*

(A) \* \* \*

(1) A sablefish endorsement with a tier assignment will be affixed to the permit and will remain valid when the permit is registered to another permit owner (*i.e.*, change in permit ownership) or to another vessel (*i.e.*, change in vessel registration).

(2) A sablefish endorsement and its associated tier assignment are not separable from the limited entry permit, and therefore, may not be registered to another permit owner (*i.e.*, change in permit ownership) or to another vessel (*i.e.*, change in vessel registration) separately from the limited entry permit.

\* \* \* \* \*

(C) \* \* \*

(4) Any partnership or corporation with any ownership interest in or that holds a limited entry permit with a sablefish endorsement shall document the extent of that ownership interest or the individuals that hold the permit with the SFD via the Identification of Ownership Interest Form sent to the permit owner through the annual permit renewal process and whenever a change in permit owner, permit holder, and/or vessel registration occurs as described at paragraph (b)(4)(iv) and (v) of this section. SFD will not renew a sablefish-endorsed limited entry permit through the annual renewal process described at paragraph (b)(4)(i) of this section, or approve a change in permit owner, permit holder, and/or vessel registration unless the Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Identification of Ownership Interest Form that an individual person, partnership, or corporation owns or holds more than 3 permits and is not authorized to do so under paragraph (b)(3)(iv)(C)(2) of this section, the individual person, partnership or corporation will be notified and the permits owned or held by that individual person, partnership, or corporation will be void and reissued with the vessel status as "unidentified" until the permit owner owns and/or holds a quantity of permits appropriate to the restrictions and requirements described in paragraph (b)(3)(iv)(C)(2) of this section. If SFD discovers through review of the Identification of Ownership Interest Form that a partnership or corporation has had a change in membership since November 1, 2000, as described in paragraph (b)(3)(iv)(C)(3) of this section, the partnership or corporation will be notified, SFD will void any existing permits, and reissue any permits owned and/or held by that partnership or corporation in "unidentified" status with respect to vessel registration until the partnership or corporation is able to register ownership of those permits to persons authorized under this section to own sablefish-endorsed limited entry permits.

(5) A person, partnership, or corporation that is exempt from the owner-on-board requirement may sell all of their permits, buy another sablefish-endorsed permit within one year of the date of approval of the last change in permit ownership, and retain their exemption from the owner-on-board requirements. An individual person, partnership or corporation could only obtain a permit if it has not added or changed individuals since

November 1, 2000, excluding individuals that have left the partnership or corporation or that have died.

\* \* \* \* \*

(v) *MS/CV endorsement.* An MS/CV endorsement on a trawl limited entry permit conveys a conditional privilege that allows a vessel registered to it to fish in either the coop or non-coop fishery in the MS Coop Program described at § 660.150. The provisions for the MS/CV-endorsed limited entry permit, including eligibility, renewal, change of permit ownership, vessel registration, combinations, accumulation limits, fees, and appeals are described at § 660.150. Each MS/CV endorsement has an associated catch history assignment (CHA) that is permanently linked as originally issued by NMFS and which cannot be divided or registered separately to another limited entry trawl permit. Regulations detailing this process and MS/CV-endorsed permit combinations are outlined in § 660.150(g)(2).

\* \* \* \* \*

(vii) *Endorsement and exemption restrictions.* "A" endorsements, gear endorsements, sablefish endorsements and sablefish tier assignments, MS/CV endorsements, and C/P endorsements may not be registered to another permit owner (*i.e.*, change in permit ownership) or to another vessel (*i.e.*, change in vessel registration) separately from the limited entry permit. At-sea processing exemptions, specified at paragraph (b)(6) of this section, are associated with the vessel and not with the limited entry permit and may not be registered to another permit owner or to another vessel without losing the exemption.

\* \* \* \* \*

(4) \* \* \*

(ii) \* \* \*

(B) *MS/CV-endorsed permit.* When an MS/CV-endorsed permit is combined with another MS/CV-endorsed permit or with another limited entry trawl permit with no MS/CV or C/P endorsement, the resulting permit will be MS/CV-endorsed with the associated CHA as specified at § 660.150(g)(2)(iv) and (v). If an MS/CV-endorsed permit is combined with a C/P-endorsed permit, the MS/CV endorsement and CHA will not be reissued on the combined permit.

\* \* \* \* \*

(iv) \* \* \*

(A) *General.* The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved

by the SFD. The SFD will not approve a change in permit ownership for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(C) of this section. The SFD will not approve a change in permit ownership for a limited entry permit with an MS/CV endorsement or an MS permit that does not meet the ownership requirements for such permit described at § 660.150(g)(3), and § 660.150(f)(3), respectively. Change in permit owner and/or permit holder applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section. NMFS considers the following as a change in permit ownership that would require registering with and approval by SFD, including but not limited to: Selling the permit to another individual or entity; adding an individual or entity to the legal name on the permit; or removing an individual or entity from the legal name on the permit.

\* \* \* \* \*

(C) *Sablefish-endorsed permits.* If a permit owner submits an application to register a sablefish-endorsed limited entry permit to a new permit owner or holder during the primary sablefish season described at § 660.231 (generally April 1 through October 31), the initial permit owner must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or holder must sign the application form acknowledging the amount of landings to date given by the initial permit owner. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

(D) *Change in MS/CV endorsement registration.* The requirements for a change in MS/CV endorsement registration between limited entry trawl permits are specified at § 660.150(g)(2)(iv).

\* \* \* \* \*

(v) \* \* \*

(C) *Effective date.* Changes in vessel registration on permits will take effect no sooner than the first day of the next major limited entry cumulative limit period following the date that SFD receives the signed permit change in vessel registration form and the original limited entry permit, except that changes in vessel registration on MS permits and C/P-endorsed permits will take effect immediately upon reissuance to the new vessel, and a change in vessel registration on MS/CV-endorsed permits will take effect immediately upon reissuance to the new vessel only on the second change in vessel registration for the year. No change in vessel registration is effective until the limited entry permit has been reissued as registered with the new vessel.

(D) *Sablefish-endorsed permits.* If a permit owner submits an application to register a sablefish-endorsed limited entry permit to a new vessel during the primary sablefish season described at § 660.231 (generally April 1 through October 31), the initial permit owner must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or holder associated with the new vessel must sign the application form acknowledging the amount of landings to date given by the initial permit owner. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

\* \* \* \* \*

(vi) \* \* \*

(B) *Limited entry fixed gear and trawl-endorsed permits (without MS/CV or C/P endorsements).* Limited entry fixed gear and trawl-endorsed permits (without MS/CV or C/P endorsements) permits may not be registered for use with a different vessel more than once per calendar year, except in cases of death of a permit holder or if the permitted vessel is totally lost as defined in § 660.11. The exception for death of a permit holder applies for a

permit held by a partnership or a corporation if the person or persons holding at least 50 percent of the ownership interest in the entity dies.

\* \* \* \* \*

(vii) *Application and supplemental documentation.* Permit owners may request a change in vessel registration and/or change in permit ownership by submitting a complete application form. In addition, a permit owner applying for renewal, replacement, or change in permit ownership or change in vessel registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply: \* \* \*

\* \* \* \* \*

(F) For a request to change a permit's ownership that is necessitated by the death of the permit owner(s), the individual(s) requesting conveyance of the permit to a new owner must provide SFD with a death certificate of the permit owner(s) and appropriate legal documentation that either: Specifically registers the permit to a designated individual(s); or, provides legal authority to the transferor to convey the permit ownership or to request a change in vessel registration.

\* \* \* \* \*

(viii) *Application forms available.* Application forms for a change in vessel registration and a change in permit ownership of limited entry permits are available from the SFD at: NMFS Northwest Region, Sustainable Fisheries Division, Attn: Applications, 7600 Sand Point Way, NE., Seattle, WA 98115; or <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm>. Contents of the application, and required supporting documentation, are specified in the application form.

\* \* \* \* \*

(ix) *Records maintenance.* The SFD will maintain records of all limited entry permits that have been issued, renewed, registered, or replaced.

\* \* \* \* \*

(6) *At-sea processing exemptions*—(i) *Sablefish at-sea processing exemption.* As specified at §§ 660.112(b)(1)(xii) and at 660.212(d)(3), vessels are prohibited from processing sablefish at sea that were caught in the primary sablefish fishery without a sablefish at-sea processing exemption. The sablefish at-sea processing exemption has been issued to a particular vessel and that permit and vessel owner who requested the exemption. The exemption is not part of the limited entry permit. The exemption cannot be registered with any other vessel, vessel owner, or permit owner for any reason. The

sablefish at-sea processing exemption will expire upon registration of the vessel to a new owner or if the vessel is totally lost, as defined at § 660.11.

(ii) *Non-whiting at-sea processing exemption.* As specified at § 660.112(b)(1)(xii), vessels are prohibited from processing non-whiting groundfish at sea that were caught in the Shorebased IFQ Program without a non-whiting at-sea processing exemption. A permit and/or vessel owner may get an exemption to this prohibition by applying for the exemption as provided in paragraph (b)(6)(ii)(B) of this section and if his/her vessel meets the exemption qualifying criteria provided in paragraph (b)(6)(ii)(A) of this section. The non-whiting at-sea processing exemption is issued to a particular vessel and that permit and/or vessel owner who requested the exemption. The exemption is not part of the limited entry permit. The exemption is not transferable to any other vessel, vessel owner, or permit owner for any reason. The non-whiting at-sea processing exemption will expire upon registration of the vessel to a new owner or if the vessel is totally lost, as defined at § 660.11.

(A) *Qualifying criteria.* A non-whiting at-sea processing exemption will be issued to any vessel registered for use with a limited entry trawl permit that meets the non-whiting at-sea processing exemption qualifying criteria and for which the vessel owner submits a timely and complete application. The qualifying criteria for a non-whiting at-sea processing exemption are that the vessel must have been registered to a limited entry trawl permit, the vessel must have legally processed non-whiting groundfish at sea prior to July 20, 2010, and that the vessel landed that processed catch at a shorebased processor or buyer. The best evidence of a vessel having met these qualifying criteria will be receipts of processed product from shorebased processors, buyers, or exporters, accompanied by the state fish tickets or landings receipts appropriate to the processed product. Documentation showing investment in freezer equipment without also showing evidence of landing processed product is not sufficient evidence to qualify a vessel for a non-whiting at-sea processing exemption. All landings of processed non-whiting groundfish must have been harvested in waters managed under this part. Non-whiting groundfish taken in Tribal fisheries or taken outside of the fishery management area, as defined at § 660.10, does not meet the qualifying criteria.

(B) *Application and issuance process for non-whiting at-sea processing exemptions.*

(1) The SFD will mail non-whiting at-sea processing exemption applications to all current trawl permit holders and will make the application available online at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm>. Permit holders will have until February 15, 2012 to submit applications. A permit holder who believes that their vessel may qualify for the non-whiting at-sea processing exemption must submit evidence with their application showing how their vessel has met the qualifying criteria described at paragraph (b)(6)(ii)(A) of this section. Paragraph (b)(6)(ii)(C) of this section sets out the relevant evidentiary standards and burden of proof. Applications must be postmarked or hand-delivered no later than close of business February 15, 2012, to NMFS at: NMFS Northwest Region, Sustainable Fisheries Division, ATTN: Fisheries Permit Office—Processing Exemption, 7600 Sand Point Way, NE., Seattle, WA 98115.

(2) After receipt of a complete application, the SFD will notify applicants by letter of initial administrative determination (IAD) whether their vessel qualifies for the non-whiting at-sea processing exemption. A person who has been notified by the SFD that their vessel qualifies for a non-whiting at-sea processing exemption will be issued an exemption letter by SFD that must be onboard the vessel at all times.

(3) If an applicant chooses to file an appeal of the IAD letter under paragraph (b)(6)(ii)(B)(2) of this section, the applicant must follow the appeals process outlined at paragraph (g) of this section and, for the timing of the appeals, at paragraph (g)(4)(ii) of this section.

(C) *Evidence and burden of proof.* A permit and/or vessel owner applying for issuance of a non-whiting at-sea processing exemption has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(1) A copy of the current vessel documentation or registration (USCG or state) is the best evidence of vessel ownership.

(2) A copy of a state fish receiving ticket is the best evidence of a landing and of the type of gear used.

(3) A copy of a state fish receiving ticket, dock receiving ticket, landing receipt, or other written receipt indicating the name of their buyer, the date, and a description of the product form and the name and amount of non-

whiting groundfish landed is the best evidence of the commercial transfer of processed product (including glazing).

(4) A copy of a sales receipt is the best evidence of the purchase of freezing equipment.

(5) Such other relevant, credible evidence as the applicant may submit, or the SFD or the Regional Administrator request or acquire, may also be considered.

\* \* \* \* \*

(f) *Permit fees.* The Regional Administrator is authorized to charge fees to cover administrative expenses related to issuance of permits including initial issuance, renewal, permit registration, vessel registration, replacement, and appeals. The appropriate fee must accompany each application.

\* \* \* \* \*

10. In § 660.55, revise paragraphs (a), (e)(2) introductory text, and (m) to read as follows:

#### **§ 660.55 Allocations.**

(a) *General.* An allocation is the apportionment of a harvest privilege for a specific purpose, to a particular person, group of persons, or fishery sector. The opportunity to harvest Pacific Coast groundfish is allocated among participants in the fishery when the ACLs for a given year are established in the biennial harvest specifications. For any stock that has been declared overfished, any formal allocation may be temporarily revised for the duration of the rebuilding period. For certain species, primarily trawl-dominant species, beginning with the 2011–2012 biennial specifications process, separate allocations for the trawl and nontrawl fishery (which for this purpose includes limited entry fixed gear, directed open access, and recreational fisheries) will be established biennially or annually using the standards and procedures described in Chapter 6 of the PCGFMP. Chapter 6 of the PCGFMP provides the allocation structure and percentages for species allocated between the trawl and nontrawl fisheries. Also, for those species not subject to the trawl and nontrawl allocations specified under Amendment 21 and in paragraph (c)(1) of this section, separate allocations for the limited entry and open access fisheries may be established using the procedures described in Chapters 6 and 11 of the PCGFMP and this subpart. Allocation of sablefish north of 36° N. lat. is described in paragraph (h) of this section and in the PCGFMP. Allocation of Pacific whiting is described in paragraph (i) of this section and in the PCGFMP. Allocation of black rockfish is

described in paragraph (l) of this section. Allocation of Pacific halibut bycatch is described in paragraph (m) of this section. Allocations not specified in the PCGFMP are established in regulation through the biennial harvest specifications and are listed in Tables 1a through d and Tables 2a through d of this subpart.

\* \* \* \* \*

(e) \* \* \*

(2) *Species with LE/OA allocations.*

For species with LE/OA allocations that are not subject to Amendment 21 allocations, the allocation between the limited entry (both trawl and fixed gear) and the open access fisheries is determined by applying the percentage for those species with a LE/OA allocation to the commercial harvest guideline plus the amount set-aside for the non-groundfish fisheries.

\* \* \* \* \*

(m) *Pacific halibut bycatch allocation.*

The Pacific halibut fishery off Washington, Oregon and California (Area 2A in the halibut regulations) is managed under regulations at 50 CFR part 300, subpart E. The PCGFMP sets the trawl bycatch mortality limit at 15 percent of the Area 2A total constant exploitation yield (TCEY) for legal size halibut (net weight), not to exceed 130,000 pounds annually for legal size halibut (net weight) for 2012 through 2014 and, beginning in 2015, not to exceed 100,000 pounds annually for legal size halibut (net weight). The TCEY used for these calculations will be the best estimate of the TCEY available from the International Pacific Halibut Commission at the time of the calculation. To determine the trawl bycatch mortality limit, the pounds of halibut available to the trawl fleet will be expanded from the legal sized halibut mortality (net weight) to a round weight legal and sublegal sized amount. To convert from net weight to round weight, multiply by the conversion factor used by the International Pacific Halibut Commission at the time of calculation for net weight to round weight. To convert from legal sized halibut to legal and sublegal sized halibut, multiply by the conversion factor from the NMFS trawl fishery bycatch report as reported to the International Pacific Halibut Commission at the time of calculation for legal sized to legal and sublegal sized halibut. The bycatch allocation percent can be adjusted downward or upward through the biennial specifications and management measures process but the upper bound on the maximum pounds of allocation can only be changed through an FMP

amendment. Part of the overall total mortality limit is a set-aside of 10 mt of Pacific halibut (legal and sublegal, round weight), to accommodate bycatch in the at-sea Pacific whiting fishery and in the shorebased trawl fishery south of 40°10' N. lat. (estimated to be approximately 5 mt each). This set-aside can be adjusted through the biennial specifications and management measures process.

11. In § 660.60,

- a. Add paragraph (c)(1)(iv),
- b. Revise headings to paragraphs (h)(5), (h)(5)(i), and (h)(5)(ii); and
- c. Revise paragraph (h)(7), to read as follows:

**§ 660.60 Specifications and management measures.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iv) *List of IFQ species documented on observer form.* As specified at §§ 660.112(b)(1)(xiii) and 660.140(h)(1)(i), observer or catch monitor coverage while in port depends on documentation of specified retained IFQ species while the vessel is at sea by the observer program on a form. The list of IFQ species documented on the observer program form may be modified on a biennial or more frequent basis.

\* \* \* \* \*

(h) \* \* \*

(5) *Size limits, length measurement, and weight conversions.* \* \* \*

(i) *Length measurement.* \* \* \*

(ii) *Weight conversions and size limits.* \* \* \*

\* \* \* \* \*

(7) *Crossover provisions.* Crossover provisions apply to two activities: fishing on different sides of a management line, or fishing in both the limited entry and open access fisheries. NMFS uses different types of management areas for West Coast groundfish management, such as the *north-south management areas* as defined in § 660.11. Within a management area, a large ocean area with northern and southern boundary lines, trip limits, seasons, and conservation areas follow a single theme. Within each management area, there may be one or more conservation areas, defined at § 660.11 and §§ 660.70 through 660.74. The provisions within this paragraph apply to vessels fishing in different management areas. Crossover provisions also apply to vessels that fish in both the limited entry and open access fisheries, or that use open access non-trawl gear while registered to limited entry fixed gear permits. Fishery specific crossover

provisions can be found in subparts D through F of this part.

(i) *Fishing in management areas with different trip limits.* Trip limits for a species or a species group may differ in different management areas along the coast. The following crossover provisions apply to vessels fishing in different geographical areas that have different cumulative or “per trip” trip limits for the same species or species group, with the following exceptions. Such crossover provisions do not apply to: IFQ species defined at § 660.140(c), for vessels that are declared into the Shorebased IFQ Program (see § 660.13(d)(5)(iv)(A), for valid Shorebased IFQ Program declarations), species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington, as described at § 660.230(e) and § 660.330(e).

(A) *Going from a more restrictive to a more liberal area.* If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(B) *Going from a more liberal to a more restrictive area.* If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(C) *Fishing in two different areas where a species or species group is managed with different types of trip limits.* During the fishing year, NMFS may implement management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(D) *Minor rockfish.* Several rockfish species are designated with species-specific limits on one side of the 40°10' N. lat. management line, and are included as part of a minor rockfish

complex on the other side of the line.

A vessel that takes and retains fish from a minor rockfish complex (nearshore, shelf, or slope) on both sides of a management line during a single cumulative limit period is subject to the more restrictive cumulative limit for that minor rockfish complex during that period.

(1) If a vessel takes and retains minor slope rockfish north of 40°10' N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 40°10' N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 40°10' N. lat.

(2) If a vessel takes and retains minor slope rockfish south of 40°10' N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 40°10' N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 40°10' N. lat.

(ii) *Fishing in both limited entry and open access fisheries.*

(A) *Fishing in limited entry and open access fisheries with different trip limits.* Open access trip limits apply to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear, except such provisions do not apply to IFQ species defined at § 660.140(c), for vessels that are declared into the Shorebased IFQ Program (see § 660.13(d)(5)(iv)(A) for valid Shorebased IFQ Program declarations). A vessel that fishes in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit registered to it at any time during the trip limit period and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access limit may not be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit registered to it at any time during the trip limit period and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

(B) *Limited entry permit restrictions for vessels fishing in the open access fishery.*—(1) *Vessel registered to a limited entry trawl permit.* To participate in the open access fishery, described at part 660, subpart F, with open access gear, defined at § 660.11, a vessel registered to a limited entry trawl permit must make the appropriate fishery declaration, as specified at

§ 660.14(d)(5)(iv)(A). In addition, a vessel registered to a limit entry trawl permit must remove the permit from their vessel, as specified at § 660.25(b)(4)(v), unless the vessel will be fishing in the open access fishery under one of the following declarations specified at § 660.13(d):

- (i) Non-groundfish trawl gear for pink shrimp,
- (ii) Non-groundfish trawl gear for ridgeback prawn,
- (iii) Non-groundfish trawl gear for California halibut,
- (iv) Non-groundfish trawl gear for sea cucumber,
- (v) Open access Dungeness crab pot/trap gear,
- (vi) Open access HMS line gear,
- (vii) Open access salmon troll gear,
- (viii) Open access Coastal Pelagic Species net gear.

(2) *Vessel registered to a limited entry fixed gear permit.* To participate with open access gear, defined at § 660.11, subpart C, a vessel registered to a limit entry fixed gear permit must make the appropriate open access declaration, as specified at § 660.14(d)(5)(iv)(A).

12. In § 660.111, revise the definition for “Catch history assignment” to read as follows:

**§ 660.111 Trawl fishery—definitions.**

\* \* \* \* \*

*Catch history assignment or CHA* means a percentage of the mothership sector allocation of Pacific whiting based on a limited entry permit’s qualifying history and which is specified on the MS/CV-endorsed limited entry permit.

\* \* \* \* \*

13. In § 660.112,

- a. Revise paragraphs (b)(1)(iv) and (b)(1)(xii)(B); and add paragraph (b)(1)(xii)(C);
- b. Revise paragraph (b)(1)(xiii), and add (b)(1)(xvi);
- c. Revise paragraphs (b)(2)(i) and (ii) to read as follows:

**§ 660.112 Trawl fishery—prohibitions.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) Register the limited entry trawl endorsed permit to another vessel or sell the limited entry trawl endorsed permit to another owner if the vessel registered to the permit has a deficit (negative balance) in their vessel account, until the deficit is covered, regardless of the amount of the deficit.

\* \* \* \* \*

(xii) \* \* \*

(B) A vessel that has a sablefish at-sea processing exemption, described at § 660.25(b)(6)(i) may process sablefish at-sea.

(C) A vessel that has a non-whiting at-sea processing exemption, described at § 660.25(b)(6)(ii) may process non-whiting groundfish at sea.

\* \* \* \* \*

(xiii) Retain any IFQ species/species group onboard a vessel unless the vessel has observer coverage during the entire trip and observer or catch monitor coverage while in port until all IFQ species from the trip are offloaded, except for the following IFQ species: bocaccio, yelloweye rockfish, canary rockfish, and cowcod. If the observer makes available to the catch monitor an observer program form reporting the weight and number of each of the IFQ species that were retained onboard the vessel during that trip and noting any discrepancy in those species between the vessel operator and observer, the vessel would not need to maintain observer or catch monitor coverage on the vessel while in port and until the offload is complete. A vessel may deliver IFQ species/species groups to more than one IFQ first receiver, but must maintain observer coverage onboard the vessel during any transit between delivery points. Once transfer of fish begins, all fish aboard the vessel are counted as part of the same landing as defined at § 660.11. Modifying the list of IFQ species to which this exception applies has been designated as a “routine management measure” and may be modified through an inseason action, as specified at § 660.60(c)(1)(iv).

\* \* \* \* \*

(xvi) Fraudulently use a QS account or vessel account.

\* \* \* \* \*

(2) \* \* \*

(i) Receive, purchase, or take custody, control, or possession of an IFQ landing from a vessel that harvested the catch while fishing under the Shorebased IFQ Program without a valid first receiver site license.

(ii) Fail to sort fish received from a IFQ landing prior to first weighing after offloading as specified at § 660.130(d)(2) for the Shorebased IFQ Program, with the following exception. Vessels declared in to the Shorebased IFQ Program at § 660.13(d)(5)(iv)(A), may weigh catch on a bulk scale or automatic hopper scale before sorting as described at § 660.140(j)(2)(viii), for Pacific whiting taken with midwater trawl gear, and at § 660.140(j)(2)(ix)(A), for all other IFQ landings. For this exception, all but the predominant species must then be reweighed.

\* \* \* \* \*

14. In § 660.113, revise paragraphs (a)(2) and (b)(4)(i) and (ii) to read as follows:

**§ 660.113 Trawl fishery—recordkeeping and reporting.**

\* \* \* \* \*

(a) \* \* \*

(2) *Retention of records.* All records used in the preparation of records or reports specified in this section or corrections to these reports must be maintained for a period of not less than three years after the date of landing and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS. Records used in the preparation of required reports specified in this section or corrections to these reports that are required to be kept include, but are not limited to, any written, recorded, graphic, electronic, or digital materials as well as other information stored in or accessible through a computer or other information retrieval system; worksheets; weight slips; preliminary, interim, and final tally sheets; receipts; checks; ledgers; notebooks; diaries; spreadsheets; diagrams; graphs; charts; tapes; disks; or computer printouts. All relevant records used in the preparation of electronic fish ticket reports or corrections to these reports, including dock tickets, must be maintained for a period of not less than three years after the date and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS.

(b) \* \* \*

(4) \* \* \*

(i) *Required information.* All IFQ first receivers must provide the following types of information: Date of landing, vessel that made the delivery, vessel account number, name of the vessel operator, gear type used, catch area, first receiver, actual weights of species landed listed by species or species group including species with no value, condition landed, number of salmon by species, number of Pacific halibut, ex-vessel value of the landing by species, fish caught inside/outside 3 miles or both, and any other information deemed necessary by the Regional Administrator as specified on the appropriate electronic fish ticket form.

(ii) *Submissions.* The IFQ first receiver must:

(A) Include as part of each electronic fish ticket submission, the actual scale weight for each groundfish species as specified by requirements at § 660.15(c), and the vessel identification number.

(B) Use for the purpose of submitting electronic fish tickets, and maintain in good working order, computer equipment as specified at § 660.15(d);

(C) Install, use, and update as necessary, any NMFS-approved software described at § 660.15(d);

(D) Submit a completed electronic fish ticket for every IFQ landing no later than 24 hours after the date the fish are received, unless a waiver of this requirement has been granted under provisions specified at paragraph (b)(4)(iv) of this section.

(E) Follow these process and submittal requirements for offloading at a first receiver site where the fish will be processed at the offload site or if an electronic fish ticket will be recorded prior to transport:

(1) The IFQ first receiver must communicate the electronic fish ticket number to the catch monitor.

(2) After completing the offload, the electronic fish ticket information must be recorded immediately.

(3) Prior to submittal of the electronic fish ticket, the information recorded for the electronic fish ticket must be reviewed by the catch monitor and the vessel operator who delivered the fish.

(4) After review, the IFQ first receiver and the vessel operator must sign a printed hard copy of the electronic fish ticket or, if the delivery occurs outside of business hours, the original dock ticket.

(5) Prior to submittal, three copies of the signed electronic fish ticket must be produced by the IFQ first receiver and a copy provided to each of the following:

- (i) The vessel operator,
- (ii) The state of origin if required by state regulations, and
- (iii) The IFQ first receiver.

(6) After review and signature, the electronic fish ticket must be submitted within 24 hours of the completion of the offload, as specified in paragraph (b)(4)(ii)(D) of this section.

(F) Follow these process and submittal requirements for offloading at a first receiver site where the fish will be transported for processing at a different location if an electronic fish ticket is not recorded prior to transport:

(1) The IFQ first receiver must communicate the electronic fish ticket number to the catch monitor at the beginning of the offload.

(2) The vessel name and the electronic fish ticket number must be recorded on each dock ticket related to that delivery.

(3) Upon completion of the dock ticket, but prior to transfer of the offload to another location, the dock ticket information that will be used to complete the electronic fish ticket must be reviewed by the catch monitor and the vessel operator who delivered the fish.

(4) After review, the IFQ first receiver and the vessel operator must sign the

original copy of each dock ticket related to that delivery.

(5) Prior to submittal of the electronic fish ticket, three copies of the signed dock ticket must be produced by the IFQ first receiver and a copy provided to each of the following:

- (i) The vessel operator,
- (ii) The state of origin if required by state regulations, and
- (iii) The IFQ first receiver.

(6) Based on the information contained in the signed dock ticket, the electronic fish ticket must be completed and submitted within 24 hours of the completion of the offload, as specified in paragraph (b)(4)(ii)(D) of this section.

(7) Three copies of the electronic fish ticket must be produced by the IFQ first receiver and a copy provided to each of the following:

- (i) The vessel operator,
- (ii) The state of origin if required by state regulations, and
- (iii) The IFQ first receiver.

15. Revise § 660.120 to read as follows:

**§ 660.120 Trawl fishery—crossover provisions.**

The crossover provisions listed at § 660.60(h)(7), apply to vessels fishing in the limited entry trawl fishery.

16. In § 660.130, remove paragraph (c)(4)(ii)(B) and redesignate paragraph (c)(4)(ii)(C) as paragraph (c)(4)(ii)(B), revise paragraph (c) introductory text, (c)(4) introductory text, (d) introductory text, and (d)(2)(i) to read as follows:

**§ 660.130 Trawl fishery—management measures.**

(c) *Restrictions by limited entry trawl gear type.* Management measures may vary depending on the type of trawl gear (*i.e.*, large footrope, small footrope, selective flatfish, or midwater trawl gear) used and/or on board a vessel during a fishing trip, cumulative limit period, and the area fished. Trawl nets may be used on and off the seabed. For some species or species groups, Table 1 (North) and Table 1 (South) of this subpart provide trip limits that are specific to different types of trawl gear: large footrope, small footrope (including selective flatfish), selective flatfish, midwater, and multiple types. If Table 1 (North) and Table 1 (South) of this subpart provide gear specific limits for a particular species or species group, it is unlawful to take and retain, possess or land that species or species group with limited entry trawl gears other than those listed.

(4) *More than one type of trawl gear on board.* The trip limits in Table 1

(North) or Table 1 (South) of this subpart must not be exceeded.

(d) *Sorting.* Under § 660.12(a)(8), it is unlawful for any person to “fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACL or ACT or OY applied.” The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipt. Sector specific sorting requirements and exceptions are listed at paragraphs (d)(2) and (d)(3) of this section.

(2) *First receivers.* Fish landed at IFQ first receivers (including shoreside processing facilities and buying stations that intend to transport catch for processing elsewhere) must be sorted, prior to first weighing after offloading from the vessel and prior to transport away from the point of landing, with the following exception. Vessels declared in to the Shorebased IFQ Program at § 660.13(d)(5)(iv)(A), may weigh catch on a bulk scale or automatic hopper scale before sorting as described at § 660.140(j)(2)(viii), for Pacific whiting taken with midwater trawl gear, and at § 660.140(j)(2)(ix)(A), for all other IFQ landings. For this exception, all but the predominant species must then be reweighed.

17. In § 660.140,

a. Revise paragraph (a) introductory text, paragraphs (d)(1)(ii) introductory text, (d)(1)(ii)(A) and (C), (d)(2)(ii), (d)(3)(i)(D), (d)(3)(ii)(A), (d)(4)(v), (e)(1)(i), (e)(2)(ii), (e)(3)(i)(D), (e)(3)(ii), (e)(4)(i) introductory text, (e)(5)(i), (f)(1) and (2), (f)(3) introductory text, (f)(3)(iii) introductory text, (f)(3)(iii)(B), (f)(5), (f)(6), (f)(7), (h)(1)(i), (j)(1), and (l)(2);

b. Add paragraphs (f)(3)(ii)(D) and (f)(3)(iii)(C)(1) to read as follows:

**§ 660.140 Shorebased IFQ Program.**

(a) *General.* The Shorebased IFQ Program applies to qualified participants in the Pacific Coast Groundfish fishery and includes a system of transferable QS for most groundfish species or species groups, IBQ for Pacific halibut, and trip limits or set-asides for the remaining groundfish species or species groups. NMFS will issue a QS permit to eligible



participants and will establish a QS account for each QS permit owner to track the amount of QS or IBQ and QP or IBQ pounds owned by that owner. QS permit owners may own QS or IBQ for IFQ species, expressed as a percent of the allocation to the Shorebased IFQ Program for that species. NMFS will issue QP or IBQ pounds to QS permit owners, expressed in pounds, on an annual basis, to be deposited in the corresponding QS account. NMFS will establish a vessel account for each eligible vessel owner participating in the Shorebased IFQ Program, which is independent of the QS permit and QS account. In order to use QP or IBQ pounds, a QS permit owner must transfer the QP or IBQ pounds from the QS account into the vessel account for the vessel to which the QP or IBQ pounds is to be assigned. Harvests of IFQ species may only be delivered to an IFQ first receiver with a first receiver site license. In addition to the requirements of this section, the Shorebased IFQ Program is subject to the following groundfish regulations of subparts C and D:

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) *Annual QP and IBQ pound allocations.* QP and IBQ pounds will be deposited into QS accounts annually. QS permit owners will be notified of QP deposits via the IFQ Web site and their QS account. QP and IBQ pounds will be issued to the nearest whole pound using standard rounding rules (*i.e.* decimal amounts less than 0.5 round down and 0.5 and greater round up), except that in the first year of the Shorebased IFQ Program, issuance of QP for overfished species greater than zero but less than one pound will be rounded up to one pound. After making best attempts to distribute 100 percent of the Shorebased IFQ Program allocations among individual QS accounts, NMFS may determine the QP or IBQ pounds allocations to individual permits that are equal to or greater than 99.99 percent, but do not exceed 100 percent, are considered fully allocated. QS permit owners must transfer their QP and IBQ pounds from their QS account to a vessel account in order for those QP and IBQ pounds to be fished. QP and IBQ pounds must be transferred in whole pounds (*i.e.* no fraction of a QP or IBQ pound can be transferred). All QP and IBQ pounds in a QS account must be transferred to a vessel account by September 1 of each year in order to be fished.

(A) *Nonwhiting QP annual sub-allocations.* NMFS will issue QP for IFQ

species other than Pacific whiting and Pacific halibut annually by multiplying the QS permit owner's QS for each such IFQ species by that year's shorebased trawl allocation for that IFQ species. Deposits to QS accounts for IFQ species other than Pacific whiting and Pacific halibut will be made on or about January 1 each year. Until the method for distributing the QP issued for adaptive management program QS, specified at paragraph (I) of this section, is developed and implemented or through 2014, whichever is earlier, the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS.

(1) In years where the groundfish harvest specifications are known by January 1, deposits to QS accounts for IFQ species will be made on or about January 1.

(2) In years where the groundfish harvest specifications are not known by January 1, NMFS will issue QP in two parts. On or about January 1, NMFS will deposit QP based on the shorebased trawl allocation multiplied by the lower end of the range of potential harvest specifications for that year. After the final harvest specifications are established later in the year, NMFS will deposit additional QP to the QS account.

\* \* \* \* \*

(C) *Pacific halibut IBQ pounds annual allocation.* NMFS will issue IBQ pounds for Pacific halibut annually by multiplying the QS permit owner's IBQ percent by the Shorebased IFQ Program component of the trawl bycatch mortality limit for that year. Deposits to QS accounts for Pacific halibut IBQ pounds will be made on or about January 1 each year. Mortality of any size Pacific halibut count against IBQ pounds.

(1) In years where the Pacific halibut total constant exploitation yield is known by January 1, deposits to QS accounts will be made on or about January 1.

(2) In years where the Pacific halibut total constant exploitation yield is not known by January 1, NMFS will issue QP in two parts. On or about January 1, NMFS will deposit QP based on some portion of the International Pacific Halibut Commission's staff recommended total constant exploitation yield from their interim meeting. After the final Pacific halibut total constant exploitation yield is established from the International Pacific Halibut Commission's annual meeting, NMFS will deposit additional QP to the QS account.

\* \* \* \* \*

(2) \* \* \*

(ii) *Registration.* A QS account will be established by NMFS with the issuance of a QS permit. The administrative functions associated with the Shorebased IFQ Program (*e.g.*, account registration, landing transactions, and transfers) are designed to be accomplished online; therefore, a participant must have access to a computer with Internet access and must set up online access to their QS account to participate. The computer must have Internet browser software installed (*e.g.*, Internet Explorer, Netscape, Mozilla Firefox); as well as the Adobe Flash Player software version 9.0 or greater. NMFS will mail initial QS permit owners instructions to set up online access to their QS account. NMFS will use the QS account to send messages to QS permit owners; it is important for QS permit owners to monitor their online QS account and all associated messages.

(3) \* \* \*

(i) \* \* \*

(D) QS permits will not be renewed until SFD has received a complete application for a QS permit renewal, which includes payment of required fees, complete documentation of QS permit ownership on the Trawl Identification of Ownership Interest Form as required under paragraph (d)(4)(iv) of this section, a complete economic data collection form if required under § 660.114. The QS permit renewal will be considered incomplete until the required information is submitted.

\* \* \* \* \*

(ii) \* \* \*

(A) *Change in QS permit ownership.* Ownership of a QS permit cannot be registered to another individual or entity. The QS permit owner cannot change or add additional individuals or entities as owners of the permit (*i.e.*, cannot change the legal name of the permit owner(s) as given on the permit). Any change in ownership of the QS permit requires the new owner(s) to apply for a QS permit, and is subject to accumulation limits and approval by NMFS.

\* \* \* \* \*

(4) \* \* \*

(v) *Divestiture.* Accumulation limits will be calculated by first calculating the aggregate nonwhiting QS limit and then the individual species QS or IBQ control limits. For QS permit owners (including any person who has ownership interest in the owner named on the permit) that are found to exceed the accumulation limits during the initial issuance of QS permits, an adjustment period will be provided after



which they will have to completely divest of QS or IBQ in excess of the accumulation limits. QS or IBQ will be issued for amounts in excess of accumulation limits only for owners of limited entry permits as of November 8, 2008, if such ownership has been registered with NMFS by November 30, 2008. The owner of any permit acquired after November 8, 2008, or if acquired earlier, not registered with NMFS by November 30, 2008, will only be eligible to receive an initial allocation for that permit of those QS or IBQ that are within the accumulation limits; any QS or IBQ in excess of the accumulation limits will be redistributed to the remainder of the initial recipients of QS or IBQ in proportion to each recipient's initial allocation of QS or IBQ for each species. Any person that qualifies for an initial allocation of QS or IBQ in excess of the accumulation limits will be allowed to receive that allocation, but must divest themselves of the excess QS or IBQ during years three and four of the IFQ program. Holders of QS or IBQ in excess of the control limits may receive and use the QP or IBQ pounds associated with that excess, up to the time their divestiture is completed. At the end of year 4 of the IFQ program, any QS or IBQ held by a person (including any person who has ownership interest in the owner named on the permit) in excess of the accumulation limits will be revoked and redistributed to the remainder of the of the QS or IBQ owners in proportion to the QS or IBQ holdings in year 5. No compensation will be due for any revoked shares.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) *Gear exception.* Vessels registered to a limited entry trawl permit using the following gears would not be required to cover groundfish catch with QP or Pacific halibut catch with IBQ pounds: Non-groundfish trawl, gear types defined in the coastal pelagic species FMP, gear types defined in the highly migratory species FMP, salmon troll, crab pot, and limited entry fixed gear when the vessel also has a limited entry permit endorsed for fixed gear and has declared that it is fishing in the limited entry fixed gear fishery. Vessels using gears falling under this exception are subject to the open access fishery restrictions and limits when declared in to an open access fishery.

\* \* \* \* \*

(2) \* \* \*

(ii) *Registration.* A vessel account must be registered with the NMFS SFD Permits Office. A vessel account may be

established at any time during the year. An eligible vessel owner must submit a request in writing to NMFS to establish a vessel account. The request must include the vessel name; USCG vessel registration number (as given on USCG Form 1270) or state registration number, if no USCG documentation; all vessel owner names (as given on USCG Form 1270, or on state registration, as applicable); and business contact information, including: Address, phone number, fax number, and e-mail. Requests for a vessel account must also include the following information: A complete economic data collection form as required under § 660.113(b), (c) and (d), and a complete Trawl Identification of Ownership Interest Form as required under paragraph (e)(4)(ii) of this section. The request for a vessel account will be considered incomplete until the required information is submitted. Any change specified at paragraph (e)(3)(ii) of this section, including a change in the legal name of the vessel owner(s), will require the new owner to register with NMFS for a vessel account. A participant must have access to a computer with Internet access and must set up online access to their vessel account to participate. The computer must have Internet browser software installed (e.g., Internet Explorer, Netscape, Mozilla Firefox); as well as the Adobe Flash Player software version 9.0 or greater. NMFS will mail vessel account owners instructions to set up online access to their vessel account. NMFS will use the vessel account to send messages to vessel owners in the Shorebased IFQ Program; it is important for vessel owners to monitor their online vessel account and all associated messages.

(3) \* \* \*

(i) \* \* \*

(D) Vessel accounts will not be renewed until SFD has received a complete application for a vessel account renewal, which includes payment of required fees, a complete documentation of permit ownership on the Trawl Identification of Ownership Interest Form as required under (e)(4)(ii) of this section, and a complete economic data collection form as required under § 660.114. The vessel account renewal will be considered incomplete until the required information is submitted.

\* \* \* \* \*

(ii) *Change in vessel account ownership.* Vessel accounts are non-transferable and ownership of a vessel account cannot change (i.e., cannot change the legal name of the owner(s) as given on the vessel account). If the

ownership of a vessel changes (as given on a USCG or state vessel registration documentation), then a new vessel account must be opened by the new owner in order for the vessel to participate in the Shorebased IFQ Program.

\* \* \* \* \*

(4) \* \* \*

(i) *Vessel limits.* For each IFQ species or species group specified in this paragraph, vessel accounts may not have QP or IBQ pounds in excess of the QP Vessel Limit (Annual Limit) in any year, and, for species covered by Unused QP Vessel Limits (Daily Limit), may not have QP or IBQ pounds in excess of the Unused QP Vessel Limit at any time. The QP Vessel Limit (Annual Limit) is calculated as unused available QPs plus used QPs (landings and discards) plus any pending outgoing transfer of QPs. The Unused QP Vessel Limits (Daily Limit) is calculated as unused available QPs plus any pending outgoing transfer of QPs. These vessel limits are as follows:

\* \* \* \* \*

(5) \* \* \*

(i) *Surplus QP or IBQ pounds.* A vessel account with a surplus of QP or IBQ pounds (unused QP or IBQ pounds) for any IFQ species at the end of the fishing year may carryover for use in the immediately following year an amount of unused QP or IBQ pounds up to its carryover limit. The carryover limit for the surplus is calculated as 10 percent of the cumulative total QP or IBQ pounds (used and unused, less any transfers or any previous carryover amounts) in the vessel account at the end of the year. NMFS will credit the carryover amount to the vessel account in the immediately following year once NMFS has completed its end-of-the-year account reconciliation. NMFS will notify vessel account owners through the online IFQ system of any additional QP or IBQ pounds resulting from a carryover of surplus pounds. If there is a decline in the OY between the base year and the following year in which the QP or IBQ pounds would be carried over, the carryover amount will be reduced in proportion to the reduction in the OY. Surplus QP or IBQ pounds may not be carried over for more than one year. Any amount of QP or IBQ pounds in a vessel account and in excess of the carryover amount will expire on December 31 each year and will not be available for any future use.

\* \* \* \* \*

(f) \* \* \*

(1) *General.* The first receiver site license authorizes the holder to receive, purchase, or take custody, control, or

possession of an IFQ landing at a specific physical site onshore directly from a vessel. Each buyer of groundfish from a vessel making an IFQ landing must have a first receiver site license for each physical location where the IFQ landing is offloaded.

(2) *Issuance.*—(i) First receiver site licenses will only be issued to a person registered to a valid license issued by the state of Washington, Oregon, or California, and that authorizes the person to receive fish from a catcher vessel.

(ii) A separate first receiver site license will be issued for each IFQ first receiver for each specific physical location where the IFQ first receiver will receive, purchase or take custody, control, or possession of an IFQ landing from a vessel.

(iii) An IFQ first receiver may apply for a first receiver site license at any time during the calendar year.

(iv) IFQ first receivers must reapply for a first receiver site license as specified at paragraphs (f)(6) and (7) of this section.

\* \* \* \* \*

(3) *Application process.* Persons interested in being licensed as an IFQ first receiver for a specific physical location must submit a complete application for a first receiver site license to NMFS, Northwest Region, Permits Office, *Attn:* Catch Monitor Coordinator, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115. NMFS will only consider complete applications for approval. A complete application includes:

\* \* \* \* \*

(ii) \* \* \*

(D) The name and signature of the person submitting the application and the date of the application.

\* \* \* \* \*

(iii) *A catch monitoring plan.* All IFQ first receivers must prepare and operate under a NMFS-accepted catch monitoring plan for each specific physical location. A proposed catch monitoring plan detailing how the IFQ first receiver will meet each of the performance standards in paragraph (f)(3)(iii)(C) of this section must be included with the application. NMFS will not issue a first receiver site license to a person that does not have a current, NMFS-accepted catch monitoring plan.

\* \* \* \* \*

(B) *Arranging an inspection.* After receiving a complete application for a first receiver site license, including the proposed catch monitoring plan, NMFS will contact the applicant to schedule a site inspection.

\* \* \* \* \*

(C) \* \* \*

(11) *Electronic fish ticket submittal.* Describe how the electronic fish ticket submittal requirements specified at § 660.113(b)(4)(ii) will be met.

\* \* \* \* \*

(5) *Effective date.* The first receiver site license is effective upon approval and issuance by NMFS and will be effective for one year from the date of NMFS issuance, or until the state license required by paragraph (f)(2)(i) of this section is no longer effective, whichever occurs first.

(6) *Reissuance in subsequent years.* Existing license holders must reapply annually. If the existing license holder fails to reapply, the first receiver's site license will expire as specified in paragraph (f)(5) of this section. The IFQ first receiver will not be authorized to receive IFQ species from a vessel if their first receiver site license has expired.

(7) *Change in ownership of an IFQ first receiver.* If there are any changes to the owner of a first receiver registered to a first receiver site license during a calendar year, the first receiver site license is void. The new owner of the first receiver must apply to NMFS for a first receiver site license. A first receiver site license may not be registered to any other person.

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(i) Any vessel participating in the Shorebased IFQ Program must carry a NMFS-certified observer during any trip and must maintain observer or catch monitor coverage while in port until all fish from that trip have been offloaded, with the following exception. If the observer makes available to the catch monitor an observer program form reporting the weight and number of those overfished species identified in § 660.112(b)(1)(xiii) that were retained onboard the vessel during that trip and noting any discrepancy in those species between the vessel operator and observer, the vessel would not need to maintain observer or catch monitor coverage on the vessel while in port and until the offload is complete. If a vessel delivers fish from an IFQ trip to more than one IFQ first receiver, the observer must remain onboard the vessel during any transit between delivery points.

\* \* \* \* \*

(j) \* \* \*

(1) *Catch monitoring plan.* All IFQ first receivers must operate under a NMFS-accepted catch monitoring plan for each specific physical location where IFQ landings will be received,

purchased, or taken custody, control, or possession of.

\* \* \* \* \*

(l) \* \* \*

(2) *AMP QP pass through.* The 10 percent of non-whiting QS will be reserved for the AMP, but the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS through 2014 or until alternative criteria for distribution of the AMP QP is developed and implemented, whichever is earlier.

18. In § 660.150,

a. Revise paragraph (a) introductory text, (c)(2)(i)(A), (d)(1)(iii) introductory text, (d)(1)(iii)(A)(1)(vi), (f)(2)(i), (f)(3)(i), (g)(1)(iii), (g)(2)(iv), and (g)(3)(i) introductory text;

b. Add paragraphs (c)(2)(i)(B)(1)(i) and (ii), (c)(2)(i)(C), (c)(2)(ii)(C), (g)(2)(v) and (vi) to read as follows:

#### § 660.150 Mothership (MS) Coop Program.

(a) *General.* The MS Coop Program is a general term to describe the limited access program that applies to eligible harvesters and processors in the mothership sector of the Pacific whiting at-sea trawl fishery. Eligible harvesters and processors, including coop and non-coop fishery participants, must meet the requirements set forth in this section of the Pacific Coast groundfish regulations. Each year a vessel registered to an MS/CV-endorsed permit may fish in either the coop or non-coop portion of the MS Coop Program, but not both. In addition to the requirements of this section, the MS Coop Program is subject to the following groundfish regulations of subparts C and D of this part:

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) *Pacific whiting catch history assignment.* Each MS/CV endorsement's associated catch history assignment of Pacific whiting will be annually allocated to a single permitted MS coop or to the non-coop fishery. If multiple MS/CV endorsements and their associated CHAs are registered to a limited entry permit, that permit may be simultaneously registered to more than one MS coop or to both a coop(s) and non-coop fishery. Once assigned to a permitted MS coop or to the non-coop fishery, each MS/CV endorsement's catch history assignment remains with that permitted MS coop or non-coop fishery for that calendar year. When the mothership sector allocation is established, the information for the conversion of catch history assignment to pounds will be made available to the

public through a **Federal Register** announcement and/or public notice and/or the NMFS Web site. The amount of whiting from the catch history assignment will be issued to the nearest whole pound using standard rounding rules (*i.e.* less than 0.5 rounds down and 0.5 and greater rounds up).

(1) In years where the Pacific whiting harvest specification is known by the start of the mothership sector primary whiting season specified at § 660.131(b)(2)(iii)(B), allocation for Pacific whiting will be made by the start of the season.

(2) In years where the Pacific whiting harvest specification is not known by the start of the mothership sector primary whiting season specified at § 660.131(b)(2)(iii)(B), NMFS will issue Pacific whiting allocations in two parts. Before the start of the primary whiting season, NMFS will allocate Pacific whiting based on the MS Coop Program allocation percent multiplied by the lower end of the range of potential harvest specifications for Pacific whiting for that year. After the final Pacific whiting harvest specifications are established, NMFS will allocate any additional amounts of Pacific whiting to the MS Coop Program.

(B) \* \* \*

(1) \* \* \*

(i) In years where the groundfish harvest specifications are known by the start of the mothership sector primary whiting season specified at § 660.131(b)(2)(iii)(B), allocation of non-whiting groundfish species with an allocation will be made by the start of the season.

(ii) In years where the groundfish harvest specifications are not known by the start of the mothership sector primary whiting season specified at § 660.131(b)(2)(iii)(B), NMFS will issue allocations for non-whiting groundfish species with an allocation in two parts. Before the start of the whiting primary season, NMFS will allocate non-whiting groundfish species with an allocation based on the MS Coop Program allocation percent multiplied by the lower end of the range of potential harvest specifications for those species for that year. After the final groundfish harvest specifications are established, NMFS will allocate any additional amounts of non-whiting groundfish species with an allocation to the MS Coop Program.

\* \* \* \* \*

(C) After making best attempts to distribute 100 percent of the MS Coop Program allocations among the catch history assignments for individual MS/CV-endorsed permits, NMFS may

determine the allocations to individual permits that are equal to or greater than 99.99 percent, but do not exceed 100 percent, are considered fully allocated.

\* \* \* \* \*

(ii) \* \* \*

(C) If all MS/CV-endorsed permits are members of a single coop in a given year and there is not a non-coop fishery, then NMFS will allocate 100 percent of the MS Coop Program allocation to that coop.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) *Application for MS coop permit.*

The designated coop manager, on behalf of the coop entity, must submit a complete application form and include each of the items listed in paragraph (d)(1)(iii)(A) of this section. Only complete applications will be considered for issuance of a MS coop permit. An application will not be considered complete if any required application fees and annual coop reports have not been received by NMFS. NMFS may request additional supplemental documentation as necessary to make a determination of whether to approve or disapprove the application. Application forms and instruction are available on the NMFS NWR Web site (<http://www.nwr.noaa.gov>) or by request from NMFS. The designated coop manager must sign the application acknowledging the responsibilities of a designated coop manager defined in paragraph (b)(3) of this section. For permit owners with more than one MS/CV endorsement and associated CHA, paragraph (g)(2)(iv)(D) of this section specifies how to join an MS coop(s).

(A) \* \* \*

(1) \* \* \*

(vi) A clause stating that if a permit is registered to a new permit owner during the effective period of the coop agreement, any new owners of that member permit would be coop members required to comply with membership restrictions in the coop agreement.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(i) *Renewal.* An MS permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4). If a vessel registered to the MS permit will operate as a mothership in the year for which the permit is renewed, the permit owner must make a declaration as part of the permit renewal that while participating in the whiting fishery it will operate solely as a mothership during the calendar year to which its limited entry

permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is registered to a different permit owner during the year, unless it is rescinded in response to a written request from the permit owner. Any request to rescind a declaration must be made by the permit owner and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

\* \* \* \* \*

(3) \* \* \*

(i) *MS permit usage limit.* No person who owns an MS permit(s) may register the MS permit(s) to vessels that cumulatively process more than 45 percent of the annual mothership sector Pacific whiting allocation. For purposes of determining accumulation limits, NMFS requires that permit owners submit a complete trawl ownership interest form for the permit owner as part of annual renewal for the MS permit. An ownership interest form will also be required whenever a new permit owner obtains an MS permit as part of a request for a change in permit ownership. Accumulation limits will be determined by calculating the percentage of ownership interest a person has in any MS permit. Determination of ownership interest will subject to the individual and collective rule.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(iii) *MS/CV endorsement and CHA non-severable.* Subject to the regulations at paragraphs (g)(2)(iv) and (v) of this section, an MS/CV endorsement and its associated CHA are permanently linked together as originally issued by NMFS and cannot be divided or registered separately to another limited entry trawl permit. An MS/CV endorsement and its associated CHA must be registered to a limited entry trawl permit and any change in endorsement registration must be to another limited entry trawl permit.

\* \* \* \* \*

(2) \* \* \*

(iv) *Change in MS/CV endorsement registration.* As specified at § 660.25(b)(3)(v), each MS/CV endorsement has an associated CHA that is permanently linked as originally issued by NMFS and cannot be divided or registered separately to another limited entry trawl permit. An MS/CV endorsement and associated CHA must be registered to a limited entry trawl permit and any change in MS/CV endorsement registration must be to another limited entry trawl permit. Any

change in MS/CV endorsement registration will be registered separately on the limited entry trawl permit. An MS/CV endorsement and its associated CHA cannot be registered to any other person other than the specified owner of the limited entry trawl permit to which it is registered.

(A) *Multiple MS/CV endorsements on a limited entry trawl permit.* Multiple MS/CV endorsements and associated CHAs may be registered to a single limited entry trawl permit. If multiple endorsements are registered to a single limited entry trawl permit, the whiting CHA amount (expressed as a percent) will remain in the amount that it was originally issued by NMFS and will not be combined as a single larger CHA, unless two or more MS/CV-endorsed permits are combined for purposes of increasing the size endorsement, as specified at § 660.25(b)(4)(ii)(B). Any change in MS/CV endorsement registration may be disapproved if the person owning the limited entry trawl permit has aggregate CHA amounts in excess of the accumulation limits specified at paragraph (g)(3) of this section.

(B) *Application.* A request for a change in MS/CV endorsement registration must be made between September 1 and December 31 of each year. Any transfer of MS/CV endorsement and its associated CHA to another limited entry trawl permit must be requested using a change in permit ownership form and the permit owner or an authorized representative of the permit owner must certify that the application is true and correct by signing and dating the form. In addition, the form must be notarized, and the permit owner selling the MS/CV endorsement and CHA must provide the sale price of the MS/CV endorsement and its associated CHA. If any assets in addition to the MS/CV endorsement and its associated CHA are included in the sale price, those assets must be itemized and described.

(C) *Effective date.* Any change in MS/CV endorsement registration from one limited entry trawl permit to another limited entry trawl permit will be effective on January 1 in the year following the application period.

(D) A limited entry trawl permit with multiple MS/CV endorsement registrations may be simultaneously registered to more than one coop or to both a coop(s) and non-coop fishery. In such cases, as part of the coop permit application process, specified at paragraph (d)(iii) of this section, the permit owner must specify on the coop permit application form which MS/CV endorsement and associated CHA is

specifically registered to a particular coop or to the non-coop fishery.

(v) *Combination.* An MS/CV-endorsed permit may be combined with one or more other limited entry trawl permits; the resulting permit will be a single permit with an increased size endorsement. If the MS/CV-endorsed permit is combined with another limited entry trawl-endorsed permit other than a C/P-endorsed permit, the resulting permit will be MS/CV-endorsed. If an MS/CV-endorsed permit is combined with a C/P-endorsed permit, the resulting permit will be exclusively a C/P-endorsed permit, and will not have an MS/CV endorsement. If an MS/CV-endorsed permit is combined with another MS/CV-endorsed permit, the combined catch history assignment of the permit(s) will be added to the active permit (the permit remaining after combination) and the other permit will be retired. If a trawl permit has more than one MS/CV endorsements and it is combined with a non C/P-endorsed trawl permit with no such endorsements, the MS/CV endorsements on the resulting permit will be maintained as separate endorsements on the resulting permit. NMFS will not approve a permit combination if it results in a person exceeding the accumulation limits specified at paragraph (g)(3) of this section. Any request to combine permits is subject to the provision provided at § 660.25(b), including the combination formula for resulting size endorsements.

(vi) *One-time request to undo a permit combination.* If two or more MS/CV-endorsed permits have been combined before January 1, 2012 for purposes of increasing the vessel's size endorsement, a permit owner of the resulting combined permit will have until [Insert date 90 days after date of publication of the final rule in the FEDERAL REGISTER] to undo that permit combination. The permit owner must submit a letter to NMFS requesting such action. The letter must be postmarked or hand-delivered to NMFS by the deadline.

\* \* \* \* \*

(3) \* \* \*

(i) *MS/CV-endorsed permit ownership limit.* No person shall own MS/CV-endorsed permits for which the collective Pacific whiting allocation total is greater than 20 percent of the total mothership sector allocation. For purposes of determining accumulation limits, NMFS requires that permit owners submit a complete trawl ownership interest form for the permit owner as part of annual renewal of an MS/CV-endorsed permit. An ownership

interest form will also be required whenever a new permit owner obtains an MS/CV-endorsed permit as part of a request for a change in permit ownership. Accumulation limits will be determined by calculating the percentage of ownership interest a person has in any MS/CV-endorsed permit and the amount of the Pacific whiting catch history assignment given on the permit. Determination of ownership interest will be subject to the individual and collective rule.

\* \* \* \* \*

19. In § 660.160,

a. Revise paragraphs (a) introductory text, (d)(1)(iii)(A)(1)(iv), (e)(1)(i), (e)(2)(i);

b. Add paragraphs (c)(2)(i) and (ii), and (c)(3)(i)(A) and (B) to read as follows:

**§ 660.160 Catcher/processor (C/P) Coop Program.**

(a) *General.* The C/P Coop Program is a limited access program that applies to vessels in the C/P sector of the Pacific whiting at-sea trawl fishery and is a single voluntary coop. Eligible harvesters and processors must meet the requirements set forth in this section of the Pacific Coast groundfish regulations. In addition to the requirements of this section, the C/P Coop Program is subject to the following groundfish regulations:

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) In years where the Pacific whiting harvest specification is known by the start of the catcher/processor sector primary whiting season specified at § 660.131(b)(2)(iii)(A), allocation for Pacific whiting will be made by the start of the season.

(ii) In years where the Pacific whiting harvest specification is not known by the start of the catcher/processor sector primary whiting season specified at § 660.131(b)(2)(iii)(A), NMFS will issue Pacific whiting allocations in two parts. Before the start of the primary whiting season, NMFS will allocate Pacific whiting based on the C/P Coop Program allocation percent multiplied by the lower end of the range of potential harvest specifications for Pacific whiting for that year. After the final Pacific whiting harvest specifications are established, NMFS will allocate any additional amounts of Pacific whiting to the C/P Coop Program.

(3) \* \* \*

(i) \* \* \*

(A) In years where the groundfish harvest specifications are known by the start of the catcher/processor sector primary whiting season specified at § 660.131(b)(2)(iii)(A), allocation of non-

whiting groundfish species with an allocation will be made by the start of the season.

(B) In years where the groundfish harvest specifications are not known by the start of the catcher/processor sector primary whiting season specified at § 660.131(b)(2)(iii)(A), NMFS will issue allocations for non-whiting groundfish species with an allocation in two parts. Before the start of the primary whiting season, NMFS will allocate non-whiting groundfish species with an allocation based on the C/P Coop Program allocation percent multiplied by the lower end of the range of potential harvest specifications for those species for that year. After the final groundfish harvest specifications are established, NMFS will allocate any additional amounts of non-whiting groundfish species with an allocation to the C/P Coop Program.

\* \* \* \* \*

- (d) \* \* \*
- (1) \* \* \*
- (iii) \* \* \*
- (A) \* \* \*
- (1) \* \* \*

(iv) A clause stating that if a permit is registered to a new permit owner during the effective period of the coop agreement, any new owners of that member permit would be coop members and are required to comply with membership restrictions in the coop agreement.

\* \* \* \* \*

- (e) \* \* \*
- (1) \* \* \*

(i) *Non-severable.* A C/P endorsement is not severable from the limited entry trawl permit, and therefore, the endorsement may not be registered to another permit owner or to another vessel separately from the limited entry trawl permit.

\* \* \* \* \*

- (2) \* \* \*

(i) *Renewal.* A C/P-endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4). If a vessel registered to the C/P-endorsed permit will operate as a mothership in the year for which the permit is renewed, the permit owner must make a declaration as part of the permit renewal that while participating in the whiting fishery they will operate solely as a mothership during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is registered to a different permit owner during the year, unless it is rescinded in response to a written request from the permit owner. Any

request to rescind a declaration must be made by the permit owner and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

\* \* \* \* \*

20. In § 660.212, revise paragraph (d)(3) to read as follows:

**§ 660.212 Fixed gear fishery—prohibitions.**

\* \* \* \* \*

- (d) \* \* \*

(3) Process sablefish taken at-sea in the limited entry fixed gear sablefish primary fishery defined at § 660.231, from a vessel that does not have a sablefish at-sea processing exemption, described at § 660.25(b)(6)(i).

21. Revise 660.220 to read as follows:

**§ 660.220 Fixed gear fishery—crossover provisions.**

The crossover provisions listed at § 660.60(h)(7), apply to vessels fishing in the limited entry fixed gear fishery.

22. In § 660.231, revise paragraph (b)(4)(i) and (b)(4)(ii)(A) to read as follows:

**§ 660.231 Limited entry fixed gear sablefish primary fishery.**

\* \* \* \* \*

- (b) \* \* \*

- (4) \* \* \*

(i) The person, partnership or corporation had ownership interest in a limited entry permit with a sablefish endorsement prior to November 1, 2000. A person who has ownership interest in a partnership or corporation that owned a sablefish-endorsed permit as of November 1, 2000, but who did not individually own a sablefish-endorsed limited entry permit as of November 1, 2000, is not exempt from the owner-on-board requirement when he/she leaves the partnership or corporation and purchases another permit individually. A person, partnership, or corporation that is exempt from the owner-on-board requirement may sell all of their permits, buy another sablefish-endorsed permit within up to a year from the date the last change in permit ownership was approved, and retain their exemption from the owner-on-board requirements. Additionally, a person, partnership, or corporation that qualified for the owner-on-board exemption, but later divested their interest in a permit or permits, may retain rights to an owner-on-board exemption as long as that person, partnership, or corporation purchases another permit by March 2, 2007. A person, partnership or corporation could only purchase a permit if it has not added or changed individuals since November 1, 2000, excluding

individuals that have left the partnership or corporation, or that have died.

(ii) \* \* \*

(A) Evidence of death of the permit owner shall be provided to NMFS in the form of a copy of a death certificate. In the interim before the estate is settled, if the deceased permit owner was subject to the owner-on-board requirements, the estate of the deceased permit owner may send a letter to NMFS with a copy of the death certificate, requesting an exemption from the owner-on-board requirements. An exemption due to death of the permit owner will be effective only until such time that the estate of the deceased permit owner has registered the deceased permit owner's permit to a beneficiary or up to three years after the date of death as proven by a death certificate, whichever is earlier. An exemption from the owner-on-board requirements will be conveyed in a letter from NMFS to the estate of the permit owner and is required to be on the vessel during fishing operations.

\* \* \* \* \*

23. Revise 660.320 to read as follows:

**§ 660.320 Open access fishery—crossover provisions.**

The crossover provisions listed at § 660.60(h)(7), apply to vessels fishing in the open access fishery.

24. In § 660.333, revise paragraphs (b) through (d) to read as follows:

**§ 660.333 Open access non-groundfish trawl fishery—management measures.**

\* \* \* \* \*

(b) *Participation in the ridgeback prawn fishery.* A trawl vessel will be considered participating in the open access, non-groundfish trawl ridgeback prawn fishery if:

(1) It is declared “non-groundfish trawl gear for ridgeback prawn” under § 660.13(d)(5)(iv), regardless of whether it is registered to a Federal limited entry trawl-endorsed permit; and

(2) The landing includes ridgeback prawns taken in accordance with California Fish and Game Code, section 8595, which states: “Prawns or shrimp may be taken for commercial purposes with a trawl net, subject to Article 10 (commencing with Section 8830) of Chapter 3.”

(c) *Participation in the California halibut fishery.* A trawl vessel will be considered participating in the open access, non-groundfish trawl California halibut fishery if:

(1) It is declared “non-groundfish trawl gear for California halibut” under § 660.13(d)(5)(iv), regardless of whether it is registered to a Federal limited entry trawl-endorsed permit;

(2) All fishing on the trip takes place south of Pt. Arena, CA (38°57.50' N. lat.); and

(3) The landing includes California halibut of a size required by California Fish and Game Code section 8392, which states: “No California halibut may be taken, possessed or sold which measures less than 22 in (56 cm) in total length, unless it weighs 4-lb (1.8144 kg) or more in the round, 3 and one-half lbs (1.587 kg) or more dressed with the head on, or 3-lbs (1.3608 kg) or more dressed with the head off. Total length

means the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail.”

(d) *Participation in the sea cucumber fishery.* A trawl vessel will be considered to be participating in the open access, non-groundfish trawl sea cucumber fishery if:

(1) It is declared “non-groundfish trawl gear for sea cucumber” under

§ 660.13(d)(5)(iv), regardless of whether it is registered to a Federal limited entry trawl-endorsed permit;

(2) All fishing on the trip takes place south of Pt. Arena, CA (38°57.50' N. lat.); and

(3) The landing includes sea cucumbers taken in accordance with California Fish and Game Code, section 8405, which requires a permit issued by the State of California.

\* \* \* \* \*

[FR Doc. 2011–22311 Filed 9–1–11; 8:45 am]

**BILLING CODE 3510–22–P**